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Restoring Kaitiakitanga:
Evaluating the Recognition of Indigenous Rights in Assessment of Environmental Effects

A report submitted
in partial fulfilment of the
requirements of the Degree of
Master of Science in Resource Management

at

Lincoln University
Aotearoa New Zealand

by

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Mana Whakatau Putaiao

November 1998

Whakapapa Pounamu

Kaitito: Rev. M.M. Gray

Kä whakapapa pounamu

Ko Takaroa ka moe Anu Mätäo

Ka puta ki waho

Tä räua tamaiti

Ko te pounamu

Kinei te täoka tapu e

Mő täoka katoa

I tuku iho, I tuku iho

Nä Poutini e

Ka piki ake kei whea

Ki te ätämira tapu teitei

Hei whakamahana e

Te mauri o te mätauraka

Koinei te täoka tapu e

Mő tätou katoa

I tuku iho, I tuku iho

Nä Poutini e

Nä Poutini e

Executive Summary

Assessment of Environmental Effects are prepared by the applicant of a resource consent. The problem that I have identified is that as the applicant has no mandatory responsibility to recognise the rights of tangata whenua in their application, tangata whenua concerns may not be recognised in AEEs. Uncertainty as to the anticipated outcome of interaction between the applicant and tangata whenua adversely influences the recognition of indigenous rights in AEEs. The consent authority plays an important role in ensuring tangata whenua rights are recognised in the consent process. Similarly, regional and local authorities have a statutory responsibility to take into account the principles of the Treaty when preparing policies and plans. How indigenous values are recognised in policies and plans will influence the recognition of indigenous rights in AEEs. The purpose of this study is to determine how to promote the recognition of indigenous rights in Assessment of Environmental Effects (AEEs).

I have the following project objectives:

1. Identify the legislative framework for indigenous rights in Assessment of Environmental Effects under the Resource Management Act.
2. Using the case study, identify what variables influence recognition of indigenous rights in an Assessment of Environmental Effects.
3. Identify why outside factors and/or legislative requirements are affecting the variables in Objective 2.
4. Develop criteria in order to promote and/or safeguard the recognition of indigenous rights.
5. Recommend a strategy to better coordinate and recognise indigenous rights in Assessment of Environmental Effects.

AEEs can be used to encourage cooperation between the applicant and tangata whenua, by establishing pre-application contact. Lack of an agreed protocol for communicating between the applicant, tangata whenua and the consent authority adversely influences recognition of indigenous rights in AEEs. The consent authority's role is vital as they have access to pertinent information regarding the details of a consent application. They also act as a contact between affected parties.

Initiatives to promote recognition of indigenous rights in AEEs are required by regional and local authorities to fulfil provisions of Section 12.15 of the Ngāi Tahu Deed of Settlement. How indigenous values are recognised through the application of the principles of the Treaty in policies and plans will influence the recognition of indigenous rights in AEEs. Regional authorities' substantiation of perceived effects from activities on the environment must 'have particular regard to kaitiakitanga', thus integrating sociocultural and spiritual values with biophysical effects. An agreement on consistent application of the principles of the Treaty will help both parties set criteria to substantiated environmental effects.

The following recommendations are made:

Canterbury Regional Council

1. Undertake a pilot programme for drafting a memorandum for implementation of the principles of the Treaty of Waitangi.
2. Seek involvement from te runanga, such as te Runanga o Rapaki.
3. Adhere to PCE's recommendation (1998:123) and establish grants and other assistance for the development of iwi and hapū resource management plans.

Te Runanga o Rapaki

1. Develop a Hapū Management Plan for Whakaraupo.
2. Participate in a pilot programme for drafting a memorandum for implementation.

Banks Peninsula District Council

1. Continue with the implementation of the Harbour Working Party Group.
2. Adhere to PCE's recommendation (1998:123) and establish grants and other assistance for the development of iwi and hapū resource management plans.

Recommendations to the Minister of the Environment in response to proposed changes to the RMA

1. Recognise tangata whenua in the Fourth Schedule,
2. Change Section 8 of the RMA to give effect to the principles of the Treaty of Waitangi.

Minister for the Environment

1. Adhere to PCE's recommendation (1998:122) and develop a National Policy Statement.

Acknowledgements

My feelings are a mix of laughter and sorrow. I am laughing with the joy of a journey that has lots of memorable experiences. I have come into contact with many wonderful people. I am touched by the sincerity of their friendship and compassion in their outlook. There have been times for much laughter and times for great anticipation. Yet, with the joy comes the sorrow of letting go. I am grateful for the support and encouragement from fellow peers of the MSc. programme, from whanau of kapahaka and the staff from Lincoln University and University of Canterbury that I have worked with.

To Roy Montgomery and Stefanie Rixecter special thanks and kudos for challenging me and allowing me to learn from it. There were times when I could have stepped aside, but my commitment was a reflection of realising my own potential, as it was sharing that potential with others. To Rev. Maurice Gray, Maurice Nutira and Peter Moeau, kia ora for showing me a path to an unknown potential. Greetings to Garth Cant.

I am grateful to Donald Couch for your contribution to my project, not only your willingness to share te Runanga o Rapaki's experiences and vision as kaitiaki of Whakaraupo, but also for your awareness that we all have a lot learn, and what better way to learn than by doing. To Bob Tai, David Gregory, Barry Loe and John Porter, thank you for your contributions, including time, resources and your perceptions regarding the case study.

To my friends and whanau your spirit and support is well received. I am looking forward to the next adventure as much as I have enjoyed this one. *Toro atu te ringa pumau ke te aroha* (Kapahaka, 1998).

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Glossary

hapū	family or distinct groups, communities
hui	gatherings, discussions, meetings, usually on marae
iwi	tribal groups
kaimoana	food from the sea, shellfish
kaitiaki	iwi, hapū or whānau group with the responsibilities of kaitiakitanga
kaitiakitanga	the responsibilities and kaupapa, passed down from the ancestors, for tangata whenua to take care of the places, natural resources and other taonga in their rohe, and the mauri of those places, resources and taonga
kaupapa	plan, strategy, tactics, methods, fundamental principles
kāwanatanga	government, the right of the Crown under the Treaty of Waitangi to govern and make laws
mahinga kai	places where food and other resources are traditionally gathered, and the gathering and management of those resources
mana	respect, dignity, status, influence, power
mana whenua	traditional status, rights and responsibilities of hapū as residents in their rohe
mauri	essential life force, the spiritual power and distinctiveness that enables each thing to exist in itself
papatipu runanga	Ngāi Tahu regional collective bodies
rangatahi	younger generations
rangatiratanga	rights of autonomous self-regulation, the authority of the iwi or hapū to make decisions and control resources
rohe	geographical territory of an iwi or hapū
runanga	committee of senior decision-makers of an iwi or hapū
takiwa	district, spaces, time, period
tangata whenua	people of the land, Māori people
taonga	valued resources, assets, prized possessions both material and non-material
tapu	sacredness, spiritual power or protective force
te reo	the Māori language
tikanga	customary correct ways of doing things, traditions
upoko	head, leader
wāhi tapu	special and sacred places
wairua	spirit, soul
whakapapa	genealogy, ancestry, identity, with place, hapū and iwi

(PCE, 1998: 132).

Acronyms

AEEs	Assessment of Environmental Effects
EIAs	Environmental Impact Assessments
IO	Investigating Officer
RMA	Resource Management Act
LGC	Local Government Act
CRC	Canterbury Regional Council
BPDC	Banks Peninsula District Council

1 Introduction

Historical encounters between Māori and Pākehā are an integral part of New Zealand society today. The Treaty of Waitangi (1840) is an important statute, incorporating Aotearoa New Zealand's history with today's endeavours. It provides a unique opportunity, through cooperation and right to self determination, for Māori and Pākehā to maintain cultural identity, while respecting Aotearoa's sensitive natural environment. Under the Treaty of Waitangi, Māori and Pākehā have an obligation to interact within a bicultural partnership agreement.

The Resource Management Act, 1991 (RMA) assigns regional and local authorities responsibility for sustainably managing the natural environment. Each authority develops regional policy statements and/or plans to achieve this purpose. In preparing these policies, each authority is also responsible for taking into account the principles of the Treaty of Waitangi (Section 8 RMA). These policies regulate activities based on the effect they have on the receiving environment. All proposed activities that have an effect on the environment require a resource consent. As part of the resource consent an Assessment of Environmental Effects (AEEs) may be required. AEEs assess or identify the effects that proposed activities have on the receiving environment, including identification of possible methods or alternatives to avoid, remedy or mitigate adverse effects.

The RMA legislative framework assigns responsibility to the applicant (of a resource consent) to prepare AEEs and requires them to manage the activity according to resource consent conditions (as set out in respective policies and plans). The problem that I have identified is that as the applicant has no mandatory responsibility to recognise the rights of tangata whenua in their application, tangata whenua concerns may not be recognised in AEEs. Pre-application contact between the applicant and tangata whenua could be advantageous in identifying environmental issues early in the consent process. Uncertainty, however, as to the anticipated outcome of interaction between the applicant and tangata whenua adversely influences the recognition of indigenous rights in AEEs. As a result, the recognition of indigenous rights in AEEs

is dependent on the implementation of Section 6(e), 7(a) and 8 of the RMA. The consent authority plays an important role in ensuring tangata whenua rights are recognised in the consent process. Similarly, regional and local authorities have a statutory responsibility to take into account the principles of the Treaty when preparing policies and plans.

The purpose of this study is to determine how to promote the recognition of indigenous rights in Assessment of Environmental Effects (AEEs). The RMA legislative requirements for recognising indigenous rights in AEEs are evaluated by using the findings from a case study.

The case study I am using is the application by Banks Peninsula District Council (BPDC) to discharge treated sewage, from their Governors Bay operation plant, into Whakaraupo (Lyttelton Harbour). The interested parties are BPDC (as applicant), Canterbury Regional Council (CRC) (as consent authority), the Minister of Conservation (as consent granter), and te Runanga o Rapaki (as principle affected indigenous party).

1.1 Terms of Reference

This project complements requirements for the Degree of Masters of Science in Resource Management. The aims and objectives fulfil the purpose of my study, and provide the basis for further research.

I have the following project aims:

- The critical evaluation of relevant literature.
- To carry out a detailed case study involving a survey of participants in an AEE process.
- Developing criteria that will be useful for interested parties (Rapaki, BPDC and CRC) to better promote and/or safeguard indigenous rights.
- Developing a research framework for integration of indigenous rights in AEE and resource management decision making.

I have the following project objectives:

6. Identify the legislative framework for indigenous rights in AEEs under the RMA.
7. Using the case study, identify what variables influence recognition of indigenous rights in an AEEs.
8. Identify why outside factors and/or legislative requirements are affecting the variables in Objective 2.
9. Develop criteria in order to promote and/or safeguard the recognition of indigenous rights.
10. Recommend a strategy to better coordinate and recognise indigenous rights in AEEs.

1.2 Study Assumptions

This study is based on the following assumptions:

- Field work involved research on one case, thus findings are not representative of other resource consent applications, whereby:
  - the applicant is a private or corporate institution or a runanga,
  - there is a number of different runanga affected by the application, or
  - there is a combination of different regional and local bodies.
- The selected case study did not have a resource consent grant at the time of completion of this project, thus the outcome of the interaction between tangata whenua, the applicant and the consent authority was unknown.
- Indigenous rights have been defined according to the current legislative framework, for which the RMA is being reviewed for possible changes. This project discusses a number of the proposed changes in respect to findings from the case study.
- Debate continues on the interpretation and implementation of the principles of the Treaty of Waitangi. This project contributes to the need for consistent implementation of these principles.

1.3 The Integrated Environmental Management Research Approach

The research undertaken adopts an approach similar to that advocated under an Integrated Environmental Management (IEM) approach. Ideally, this is a comprehensive, interdisciplinary approach to environmental management issues, the aim being to anticipate its "complex, multi-faceted, and interconnected nature" (Bührs, 1995:1). The approach stems from recognition that if environmental management issues are dealt with in a fragmented manner, the resolution of one problem is likely to cause another elsewhere, i.e., problem displacement *(ibid.)*. Therefore, environmental management decisions and practices should be as integrated, comprehensive and interdisciplinary.

Interdisciplinary research involves acknowledgement of factors relating to a multitude of traditionally prescribed disciplines, such as ecological, cultural, social/political and economic factors. Instead of separating these factors according to disciplines, the connections and relationships between each factor are identified in an holistic manner, thus resulting in an outcome that is greater than its individual components.

1.4 Methods

The information sought for this study was largely qualitative, e.g., information gathered from legislative requirements, policies and regulations, literature and experiences. The use of multiple methods of information gathering, i.e., triangulation, is an essential component of the iterative IEM process. Thus, "by using only one method there is the possibility that findings are skewed by the method used" (Banister, *et al*, 1994:147). For this study, literature reviews, a case study approach and personal interviews, were used, in combination.

A case study approach allowed this project to test the legislative framework, by evaluating the characteristics of a specific case, according to that framework. Such an approach benefits from the legislative framework, by guiding the data collection and subsequent analysis (Yin, 1994:13).

While the legislative and analytical framework can be applied to a variety of studies, the contextual conditions of kaitiakitanga are unique, and thus forms an elaborate component of my research (*ibid*), and subsequent findings. A more thorough triangulation approach would entail the use of additional case studies.

1.4.1 Ethical Considerations

I am aware of the ethical considerations, as a Pākehā writing and talking about te Runanga o Rapaki inter-relationship with Whakaraupo. My intention is not to define this relationship, rather elaborate on te Runanga o Rapaki responsibility as kaitiaki, and their continued interaction between various interest groups in order to restore the mauri of Whakaraupo. In selecting the case study I first spoke with te Runanga o Rapaki in order to avoid possible assumptions about including them in the project's research agenda.

A large component of information required for this project relates to the experiences of people involved in the case study, not necessarily recorded in literature. Therefore, interviews were a vital method of information gathering. Phone contact was made with all participants, inviting them to participate. A letter followed this conversation, formally introducing my study and highlighting participation confidentiality (refer Appendix 1 for a copy of letters and questions sent to each party). Additionally, as the resource consent application occurred while I gathered information I needed to avoid communicating concerns between other parties. I did not want to influence the interaction between each of the parties, based on the information gained from interviews. Therefore my interviews were semi structured, with questions established prior to interviews. The semi-structured interviews, however, did allow flexibility for myself to "pursue topics or issues that were not anticipated when the questions were written" (Patton, 1989:204).

1.5 Report Structure

Chapter One provides my terms of reference and approach. Chapter Two identifies international legislation promoting indigenous rights in environmental policy, and introduces the national context of Aotearoa New Zealand. Firstly, Pākehā and Māori rights are discussed under the Treaty of Waitangi 1840, then rights of Māori to participate in environmental policy under the RMA are discussed. Finally, environmental impact assessments are introduced as a tool in environmental decision making.

Chapter Three identifies the RMA legislative framework specific to recognition of indigenous rights in Assessment of Environmental Effects. Criteria are established to evaluate the recognition of indigenous rights in the AEEs. An analytical framework is discussed and identifies (from literature, case law and provisions of the RMA) possible issues for promoting indigenous rights in AEEs.

Chapter Four introduces the case study, including the history of Rapaki Bay, Whakaraupo and the rights of te Runanga o Rapaki, as representative of the people of Te Hapū o Ngati Wheke. Banks Peninsula District Council's application to discharge treated sewage into Whakaraupo is introduced, as is the current status of the application (in the Consent process).

Chapter Five analyses BPDC's AEEs, according the criteria identified in chapter Three, and evaluates findings from the case study using the analytical framework. As a result, key issues that influence the recognition of indigenous rights in AEEs are identified.

Chapter Six identifies and discusses possible options to address these key issues. Chapter Seven concludes and recommends a number of these options. Chapter Seven also sets out a research agenda to better promote indigenous rights in AEEs.

2 International and National Recognition of Indigenous Rights in Impact Assessments: Historical Background

This chapter introduces the international and national focus of indigenous rights in environmental policies and practices. Indigenous people and who they are clarified discussed, and indigenous rights in Aotearoa New Zealand, is discussed, including the Treaty of Waitangi (1840), the Local Government Act (1974) and the Resource Management Act (1991). Environmental Impact Assessments Effects (EIAs) are introduced, and discussed in terms of the need to integrate a diversity of environmental, social and cultural values into the assessment process. Assessment of Environmental Effects (AEEs) are discussed as part of promoting indigenous rights in the RMA legislative framework in Chapter 3.

2.1 Who are indigenous people?

Cobo, in his study of the problem of discrimination against indigenous populations, defines indigenous people as:

"having historical continuity with pre-invasion and post-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems" (1986: 1-4).

Cobo's definition acknoweledges the connection between first people and place, and introduces the social and political dynamics related to power over ownership of environmental resources. Indigenous rights concerned with the natural environment are traditionally a political debate. These rights recognised in law are also defining who indigenous people are. Justice Thomas Berger uses land rights to further define the collective identity of indigenous people:

"Land claims are being advanced by Native peoples all over North and South America. The defence of Native land rights is the issue upon which Native peoples base claims to their identity, culture and political autonomy, and ultimately to their survival. Throughout the New World Native people understand that without a secure land base they will cease to exist as distinct peoples; their fates will be assimilation. These claims can only be achieved, however, where Native collective identity is acknoweledged and their claim on land itself entrenched in the law" (Berger: 1992: 141).

All human races can trace their ancestral lines back to pre-colonial societies. Yet it is the intrusion of one race over another's right to land that has developed the political power struggles of indigenous people in the New World. While law is defining access and ownership of land and its resources, the 'management' of the earth's natural resources acknowledges indigenous peoples' relationship to land, water and living species, through international initiatives for sustainable development.

2.2 The International Context: Indigenous Rights and Environmental Policy

The Earth Summit, The United Nations Conference on Environment and Development, 1992 established a number of agreements incorporating rights of indigenous people. The Earth Summit attempts to give formal recognition to indigenous knowledge regarding environmental management of collective resources, such as water, air and biodiversity. The policies of the Earth Summit include:

Non-legally Binding Agreements

1. The Rio Declaration on Environment and Development;

Principle 1 states: *"Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature"* (UNCED, 1993: 116).

Principle 22 states: *"Indigenous people and their communities, and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognise and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development" (ibid).*

2. Agenda 21;

Agenda 21 sets out a number of provisions relevant for the rights of indigenous people in environmental management programs;

Under Section 26.3 (a) *"the establishment of a process to empower indigenous people and their communities through measures that include*

(i) *adoption or strengthening of appropriate policies and/or legal instruments at the national level;*

(ii) recognition that the lands of indigenous peoples should be protected from activities that are environmentally unsound or are socially and culturally inappropriate.

(iii) *recognition of their values, traditional knowledge and resource management practices with a view to promoting environmental sound practice and sustainable development.*

Under section 26.3 (c) *involvement of indigenous people at the national and local levels in resource management and conservation strategies and programs (ibid).*

3. Forest Principles.

Legally Binding Agreements

4. A Framework Convention on Climate Change; and

5. A Convention on Protection of Biological Diversity.

The contention has three fundamental objectives:

- the conservation of biological diversity,
- the sustainable use of biological resources; and
- the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources (New Zealand Conservation Authority, 1997: 64)

The Rio Declaration, Agenda 21 and the Convention on Protection of Biological Diversity provide a moral and ethical framework for indigenous people's to participate in environmental policy design and implementation *(ibid).* The Biodiversity Convention has been ratified by the New Zealand government. While this makes it legally binding to the government, it is subject to national legislation. It is, however, impossible to place this in a New Zealand context without referring to the Treaty of Waitangi and the Government' obligations under the Treaty' (Te Puni Kokiri, 1994:9).

2.3 The National Context: Indigenous Rights and Environmental Policy in New Zealand

International conventions have set precedence for recognition of indigenous rights at a national level. National legislation establishes a specific and localised framework for participation in environmental policy and decisions.

2.3.1 Treaty of Waitangi

In Aotearoa New Zealand, the Treaty of Waitangi, 1840, is the foundation document. The Treaty was signed in good faith between Pākehā and Māori: Captain William Hobson and his officials signed on behalf of the British Crown, while Māori Rangatira signed on behalf of their Iwi and Hapū (Cant, 1998a). The Treaty, as a deed, creates a special relationship between the Crown and Māori Tribes. Article I gives Kawanatanga (governorship) to the Crown, while Article II retains Tribal Rangatiratanga (iwi and hapū authority) over lands, settlements (villages), resources and taonga (treasures, spiritual and physical). Article III gives Māori and Pākehā equal rights and privileges.

Yet in practice the years between 1840 and 1970 are known as the years of loss of land, loss of memory (Orange, 1990) and loss of kaitiakitanga (Cant, 1995). New Zealand's House of Assembly failed to incorporate the Treaty or its provisions into legislation or account for it in daily decisions (Cant, 1995:9). Land wars, land confiscation and resettlements through the Native Land Court (1862) removed land and places for gathering kai (food) out of tribal control. Furthermore, government regulations intruded into all aspects of tribal life *(ibid).* Similarly, Māori tribes were excluded from participating in the management of environmental resources; their kaitiakitanga over land and resources was significantly diminished *(ibid).*

The Waitangi Tribunal was established under the Treaty of Waitangi Act, 1974, to address Treaty grievances. In order to implement the intention of the Treaty of Waitangi, the Tribunal used a number of Treaty principles to assess Māori claims of

grievances. The Treaty principles were established through the Court of Appeal and High Court decisions (Refer appendix 1 for principles advocated by Palmer). They act as a guide for future relations between indigenous Māori and immigrant Pākehā (Stokes, 1992:187). There is, however, little agreement on the implications of other Treaty principles (PCE, 1998:62), particularly in terms of implementation under RMA (pers. comm Rixecker, 1998) (Refer Appendix 2 principles advocated by Crengle) While the principles do not provide a means for weighting the inclusion of Māori values in environmental policy, they do imply a critical evaluation of Pākehā values in environmental management practices (Montgomery, 1990).

Furthermore, through the work of the Tribunal, tangata whenua (first people of the land) rights as Tino Rangatiratanga are been formally recognised, i.e., their rights as Tino Rangatiratanga and kaitiaki within environmental management. The Waitangi Tribunal in 1983 (wai006), ruled in favour of Te Atiawa as kaitiaki of the coastal reefs at Motunui. The coastal reefs provide Te Atiawa with shellfish and other kaimoana. At the time of the claim the reefs were polluted from sewage discharge, plus there was a proposal to discharge effluent in Motunui from Syngas, a government supported petro-chemical plant at Motunui. In its findings, the Waitangi Tribunal gave equal weighting to scientific and traditional evidence (Waitangi Tribunal, 1983). The findings disallowed Syngas to discharge effluent into the sea and required the three parties, Syngas, Waitara Borough and Te Atiawa, to combine their efforts and find an alternative. Other cases supporting the rights of tangata whenua, as kaitiaki of their rohe, are Ngati Pikiao from the Kaituna River (wai004: 1984) and Tainui from the Manukau Harbour (wai008: 1985).

Additionally, the Waitangi Tribunal has settled two Treaty Settlement Claims i.e., Tainui (1995) and Ngāi Tahu (1998). Each settlement included a 'basket of remedies' such as a formal apology from the Crown for past grievances, land and cash settlements, acknowledgment of place names, access to food gathering places and establishment of co-management arrangements with various institutions such as Department of Conservation. In the case of the Ngāi Tahu Deed of Settlement, under Section 12.15 a formalised procedure has been established to recognise and evaluate tangata whenua rights to participation in environmental policy and decision making under the Resource Management Act 1991.

2.3.2 Local Government Act (1974) & Resource Management Act (1991)

The Crown has also been active in assigning responsibility for environmental management of Aotearoa New Zealand's natural resources. The Local Government Act (LGA) (1974) and Resource Management Act (1991) has devolved environmental and resource management responsibility to Regional and Territorial Local Authorities.

The purpose of the RMA is to promote the sustainable management of these resources (Section 5(1)) (Refer Figure 2.1 for Purpose of RMA). The RMA recognises effects on the environment, requiring adverse effects to be avoided, remedied, or mitigated. Statutory Authorities are responsible for implementing an infrastructure, i.e., plans, policies, resource consents, consultation procedures, monitoring and enforcement procedures, in order to achieve its purpose. While responsibility for managing the environment is devolved to regional and local authorities, they are not subject to the direction and control from central government. The Minister of Local Government, however, has the power to review the performance of a local authority, and appoint a commissioner to act in place of a local authority (PCE, 1998: 10).

With respect to responsibilities of regional and local authorities for upholding the Crowns obligation to the Treaty of Waitangi, the LGA does not acknowledge the Treaty. The Parliamentary Commissioner for the Environment (PCE) states that 'local authorities are not part of the Crown for the purpose of the Treaty, and are not generally considered to be the Treaty partner in place of the Crown in the local context' (PCE, 1998:10). However, legislation such as the RMA assigns specific responsibility to regional and local authorities to 'take into account the Principles of the Treaty of Waitangi' (Refer Figure 2.1 for provisions for tangata whenua in the RMA). In achieving the purpose of the RMA, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall:

- 'take into account the principles of the Treaty of Waitangi' (Section 8).
- 'have particular regard to kaitiakitanga' (Section 7(a)).
- 'recognise and provide for, as a matter of national importance, the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga (Section 6(e)).

In this regard the Waitangi Tribunal findings have stated that the Crown is responsible for local authority actions, as the Crown has delegated responsibilities that directly influence Treaty obligations.[1] In order for local authorities to meet their responsibilities (as above), the duty to consult has been identified as a means to 'take into account', 'have particularly regard' and 'recognise and provide for' tangata whenua, within the infrastructure of the authority (MfE, 1995: 3). While duty to consult is implied under the RMA, consultation is also a recognised principle of the Treaty of Waitangi (PCE, 1998: 12).

2.3.3 Runanga / Iwi Authority

The RMA refers to iwi authorities as representative of tangata whenua in the consultation process. In 1990 the Iwi Runanga Act was proposed to incorporate runanga as representative of an iwi authority, according to an agreed charter. The purpose of each runanga was to:

- establish contracts for delivery of services and disbursement of funds to iwi;
- consult as a body representative of iwi.

The Act was repealed in 1991. As a result, clarification of who is an iwi authority is dependent on whether such a body is representative of that iwi, thus able to act on behalf of that iwi. Te hapū, as kaitiaki of their rohe, are interested in the policies, plans and resource consents affecting them. Recently, there has been a shift in focus as to the environmental responsibilities of hapū (PCE, 1998: 74), yet they do not have recognised status in the RMA. The Waitangi Tribunal has recommended that Section 2 of the RMA be amended so that iwi authorities represent hapū as tangata whenua[2]. Treaty settlements have also established appropriate recognition and responsibilities of hapū as legitimate iwi authorities. In the case of the Ngāi Tahu Deed of Settlement, iwi and hapū are recognised as kaitiaki over land and resources, such as Pounamu (Greenstone) in the South Island.

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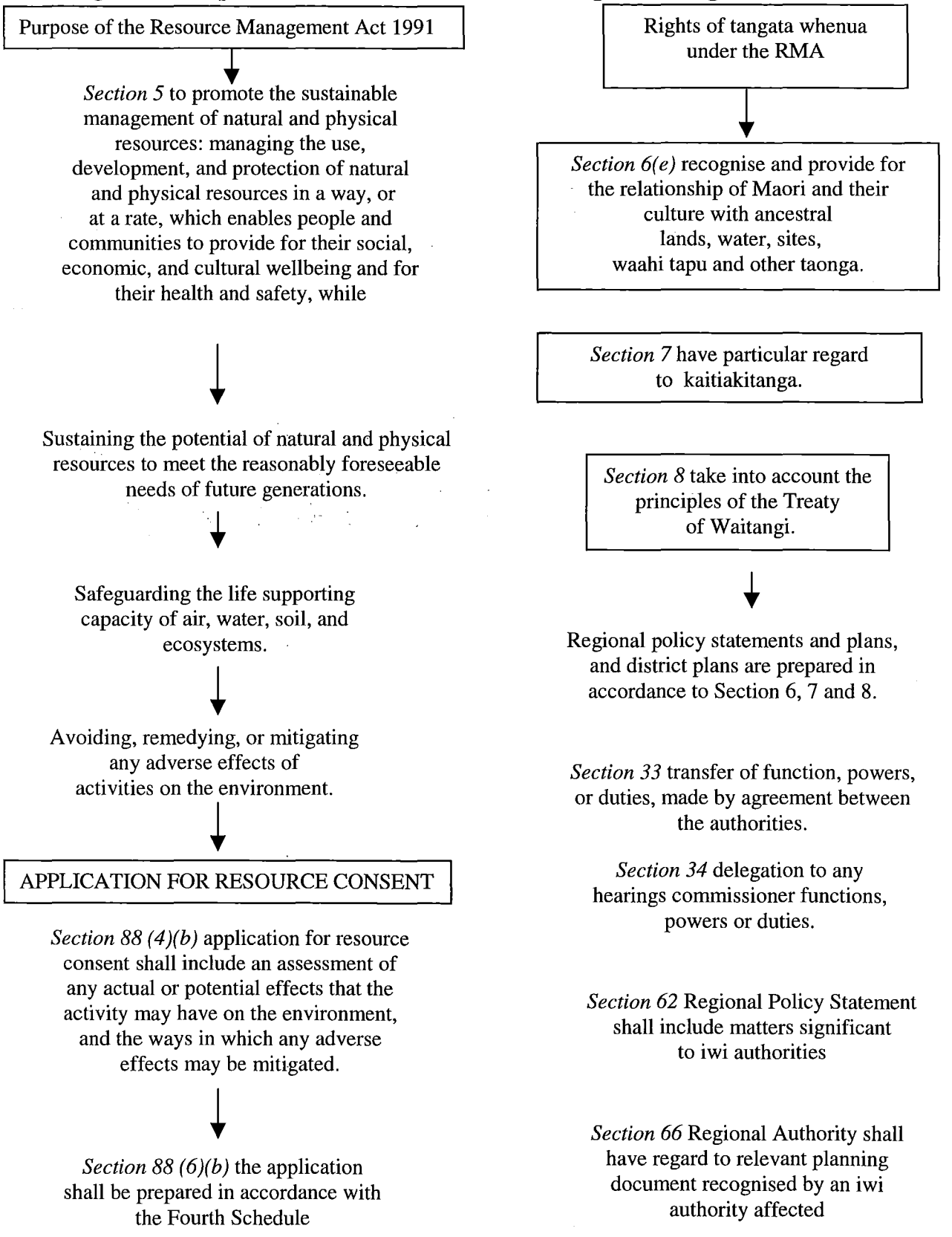
[1] Refer PCE (1998: 10) for comments on the Manukau Harbour Report (WAI8/1985) p99; Ngawha Report, 1993: 153.
[2] Refer PCE (1998: 74) for comments on Waitangi Tribunal, *Te Whanganui- a-Orotu Report on Remedies,* 1998:27.

Figure 2.1 Purpose of the RMA & Provisions for Rights of Tangata Whenua



2.4 Environmental Impact Assessments & Assessments of Environmental Effects

Assessment of Environmental Effects (AEEs) were introduced as part of the RMA regime (1991), in order to formally recognise sociocultural and economic assessments within Environmental Impact Assessments (EIAs) criteria. The history of EIAs is discussed below, and the intention of AEEs under the RMA.

2.4.1 Environmental Impact Assessments

Environmental Impact Assessments were developed as a tool to assist in assessing the impacts, adverse or not, of proposed activities, and/or development projects, on the receiving environment (O'Riordan, 1981:1). Historically, assessment techniques have inadequately recognised and incorporated environmental and social considerations into project appraisals. Environmental issues were treated on an ad hoc basis (Bührs & Bartlett, 1993).

The US National Environmental Policy Act (NEPA) formalised the EIA process in the early 1970's. Under Section 102 (2)(c) the requirements for an EIA include the assessment of:

(1) the environmental impact of the proposed action (project, programme, or policy);
(2) the residual effects that could not be mitigated by good planning;
(3) alternatives to the proposed action (including assessment of doing nothing at all);
(4) the relationship between short-term economic gains and the longer-term advantages of maintaining a productive ecosystem; and
(5) a statement of any irreversible or irretrievable environmental or social consequences should the proposed action be implemented (O'Riordan, 1981: 15).

Ecological considerations are addressed in the NEPA EIA process, but social concerns must also be weighted in environmental policy. Thus, impact assessments were extended to include social concerns, through public consultation and participation. Political ramifications of passing a proposed project were weighted not only in

biophysical terms but also according to public scrutiny. Public scrutiny is a means of integrating localised environmental knowledge into assessment processes (Morgan, 1996:194). Localised knowledge, however may often represent a minority interest, e.g., indigenous communities of North Canada opposed the building of a gas pipeline proposed in the interests of the industrialised South (Berger, 1977). The politicised nature of impact assessments results in the application of political judgement, sensitivity analysis and environmental weighting. The scrutiny of reliable information in an EIAs is an issue (Morgan, 1996), and so is the significance with which public concerns are evaluated in the assessment process (O'Riordan, 1981: 17). EIAs were used throughout Aotearoa New Zealand until the introduction of the RMA and AEEs.

2.4.2 Assessment of Environmental Effects under the RMA (1991)

AEEs, under the RMA, are used to assess any actual or potential effects that an activity may have on the environment, and the ways in which they can be mitigated (Section 88 (4)(b)). AEEs attempt to integrate social and environmental impact assessments, through the definition of the environment and provisions within the Fourth Schedule. An AEEs shall be prepared in accordance with the Fourth Schedule (Section 88 (6)(b)). Within the Schedule, any person preparing an assessment of the effects on the environment should consider any effects on people in the neighbourhood and, where relevant, the wider community including any socio-economic and cultural effects. This project focuses on recognition of indigenous rights in AEEs.

2.5 Summary

In New Zealand, regional and local authorities are responsible for sustainably managing the natural environment. In the case of indigenous peoples, the Crown is obliged to ensure the Treaty partnership is representative in environmental policy and practices. The following chapter establishes the legislative and analytical framework for recognition of indigenous rights in AEEs.

3 The Resource Management Act: The Legislative Framework for Indigenous Rights in Assessment of Environmental Effects

The purpose of this chapter is to discuss in detail the legislative framework (of the RMA) for preparation and the recognition of indigenous rights in AEEs. The legislative framework assigns responsibilities for preparation of an AEEs to the applicant. These responsibilities and criteria for promoting and/or safeguarding the recognition of indigenous rights in AEEs are discussed in Section 3.1.

The RMA legislative framework is under review from the Minister for the Environment. Some of the proposed amendments will have a significant effect on recognition of indigenous rights in AEEs and are referred to in this chapter.

3.1 Responsibilities of the Applicant: Preparation of AEEs

The applicant is responsible for completion of the AEEs, including assessment of any actual or potential effects their proposed activity may have on the environment, and the ways in which these may be mitigated (Section 88 (4)(b)). The applicant shall prepare an AEEs in accordance with the Fourth Schedule (Section 88 (6)(b)). Within the Schedule, the applicant:

- shall, (clause 1(b)) where it is likely that an activity will result in any significant adverse effect on the environment, a description of any possible alternative locations or methods for undertaking the activity.

- shall identify (clause 1(h)) those persons interested in or affected by the proposal, the consultation undertaken, and any response to the views of those consulted.

- should consider (Section 2):
  (a) Any effect on those in the neighbourhood and, where relevant, the wider community including any socio-economic and cultural effects:
  (b) Any physical effect on the locality, including any landscape and visual effects:
  (c) Any effect on ecosystems, including effects on plants or animals and any physical disturbance of habitats in the vicinity:

(d) Any effect on natural and physical resources having aesthetic, recreational, scientific, historical, spiritual, or cultural, or other special value for present or future generations

While the requirements of the Fourth Schedule are not mandatory, they are recognised by the consent authority as 'good practice' for achieving sustainable management (MfE, 1996). Consultation allows the applicant to meet the requirements of the Fourth Schedule. Case law stipulates the expectations or requirements for consultation between respective parties.

In the *Air New Zealand Ltd vs Wellington International Airport Ltd* the purpose of consultation was defined as[3]:-

"Consultation must be allowed sufficient time, and genuine effort must be made. It is to be a reality, not a charade. The concept is grasped most clearly by an approach in principle. To 'consult' is not merely to tell or present. Nor, at the other extreme, is it to agree. Consultation does not necessarily involve negotiation toward an agreement, although the latter not uncommonly can follow, as the tendency in consultation is to seek at least consensus. Consultation is an intermediate solution involving meaningful discussion. Despite its somewhat impromptu nature, I cannot improve on the description attempt, which I made in West Coast United Council vs Prebble at p405. 'Consulting involves the statement of a proposal not yet finally decided upon, listening to what others have to say, considering their responses and then deciding what will be done'."

Furthermore, Judge Kenderline found that the nature of consultation requires the applicant to respond to the views of those consulted [4]. Justice Cartwright stated that "consultation will be successful only when those consulted themselves have adequate information on which to signify reasoned consent" [5].

[3] (HC Wellington CP 403/91 6/1/92) by Justice McGechan and approval on appeal [1993] 1 NZLR 671 (in MfE, 1996: 5).
[4] Refer MfE (1996) for comment on *Aqua King Ltd vs Marlborough District council* (W19/95, 28/3/95).
[5] Refer MfE (1996) for comment on *Worldwide Leisure Lt vs Symphony Group Ltd* [1995] NZAR 177.

The applicant, however has no statutory requirement (in the RMA) to contact tangata whenua. Consideration must be made of the following:

- The High Court expressed that statutory and Treaty obligations to consult with tangata whenua is the responsibility of the consent authority not the applicant [6], it is however 'good practise' to consult and consider tangata whenua concerns in the preparation of an AEE[7].
- After preparation of AEEs the consent authority and the applicant interact, whereby the consent authority is responsible for 'taking into account the principles of the Treaty of Waitangi', thus may require the applicant to communicate with tangata whenua, as an affected party.

The consent authority uses the AEEs to assess any actual or potential effects that an activity may have on sustainably managing the natural environment. The AEEs can also identify if communication was made between the applicant and tangata whenua. The consent authority is responsible for ensuring a process is activated that identifies concerns of affected parties, whereby they can request additional information (Section 92) if the AEEs is insufficient in providing appropriate information. Criteria for determining if appropriate information has been provided to meet clause 1(h) of the Fourth Schedule is discussed below

3.1.1 Criteria for Promoting Indigenous Rights in AEEs

The criteria displayed in Table 3.1 are drawn form the RMA legislative framework and are identified to promote the rights of tangata whenua in the AEEs. They are useful to the applicant for preparing AEEs and to the consent authority for assessing the recognition of indigenous rights in AEEs.

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[6] Refer MfE (1996: 8) for comment on *Quarantine Waste (New Zealand) vs Waste Resources Ltd* [1994] NRMA 529.

[7] Refer MfE (1996) for comment on *the Ngaitiwai Trust Board vs Whangarei District Council* (A80/95, Judge Sheppard).

Table 3.1 Criteria for Assessing Recognition of Indigenous Rights in AEEs	
Requirements of Fourth Schedule, clause 1(h)	**Criteria**
Identification of those persons interested or affected by the proposal:	• Identification of iwi or hapū authority contacted. • Identification of people contacted within iwi hapū.
Consultation undertaken:	• Indication of how the consultation was undertaken. • Indication of the current stage of communication between each of the parties, including further communication required and/or difficulties experienced.
Views of Tangata Whenua:	• Concerns, issues or support identified by tangata whenua, i.e., the position tangata whenua have as kaitiaki, with regard to effects (culturally, spiritually or physically),
Responses from Tangata Whenua:	• Expression of the outcomes of communication to date • Responses the applicant wishes to make, either in agreement or not, particularly with regard to identification of alternatives. • Indication of the degree of integration of tangata whenua values or ideas in the AEE, e.g., cultural significance of the area. • Identification of areas of agreement or joint initiatives undertaken between the two parties.

The Reference Group Report (1998:66) has recommended that, in order to 'clearly indicate' that it is not mandatory for the applicant to consult, "if any" be inserted in clause 1(h) of the Fourth Schedule. The Clause will read 'those persons interested in or affected by the proposal, the consultation undertaken if any, and any response to the views of those consulted'. Furthermore the Reference Group Report recommends that section 92 (2)(a)(ii) 'explanation of the consultation undertaken by the applicant' be removed. Instead, the notification process is proposed as a means for affected parties to raise concerns. The report makes no reference to possible benefits of pre-application contact, nor possible options for encouraging it.

3.2 Analytical Framework for Promoting Indigenous Rights in AEEs

Given that the applicant has no mandatory responsibility to consider provisions for tangata whenua in the RMA, an analytical framework was developed for evaluating recognition of indigenous rights in the AEE. Tangata whenua rights (under the RMA) are discussed as part of this analytical framework. The analytical framework includes

- Responsibilities of the consent authority to 'take into account the principles of the Treaty of Waitangi'.

Responsibilities of the regional and local authorities are important in promoting the concerns and rights of tangata whenua in environmental policy and decisions.

- How to show particular regard to kaitiakitanga within the RMA legislative framework.

Having particular regard to kaitiakitanga is important for achieving better environmental outcomes. Tangata whenua environmental values, protocol and practices associated with kaitiakitanga are interconnected with the mauri of a place, integrating cultural, physical, spiritual and genealogical values.

- Ensuring appropriate interaction between each of the parties involved in the preparation of the AEEs and subsequent consent process.

Interaction between tangata whenua, the applicant and consent authority is important for improving the process of communication and understanding between each party, both in preparation of the AEEs and subsequent granting of the resource consent, thus collectively working toward desired environmental outcomes.

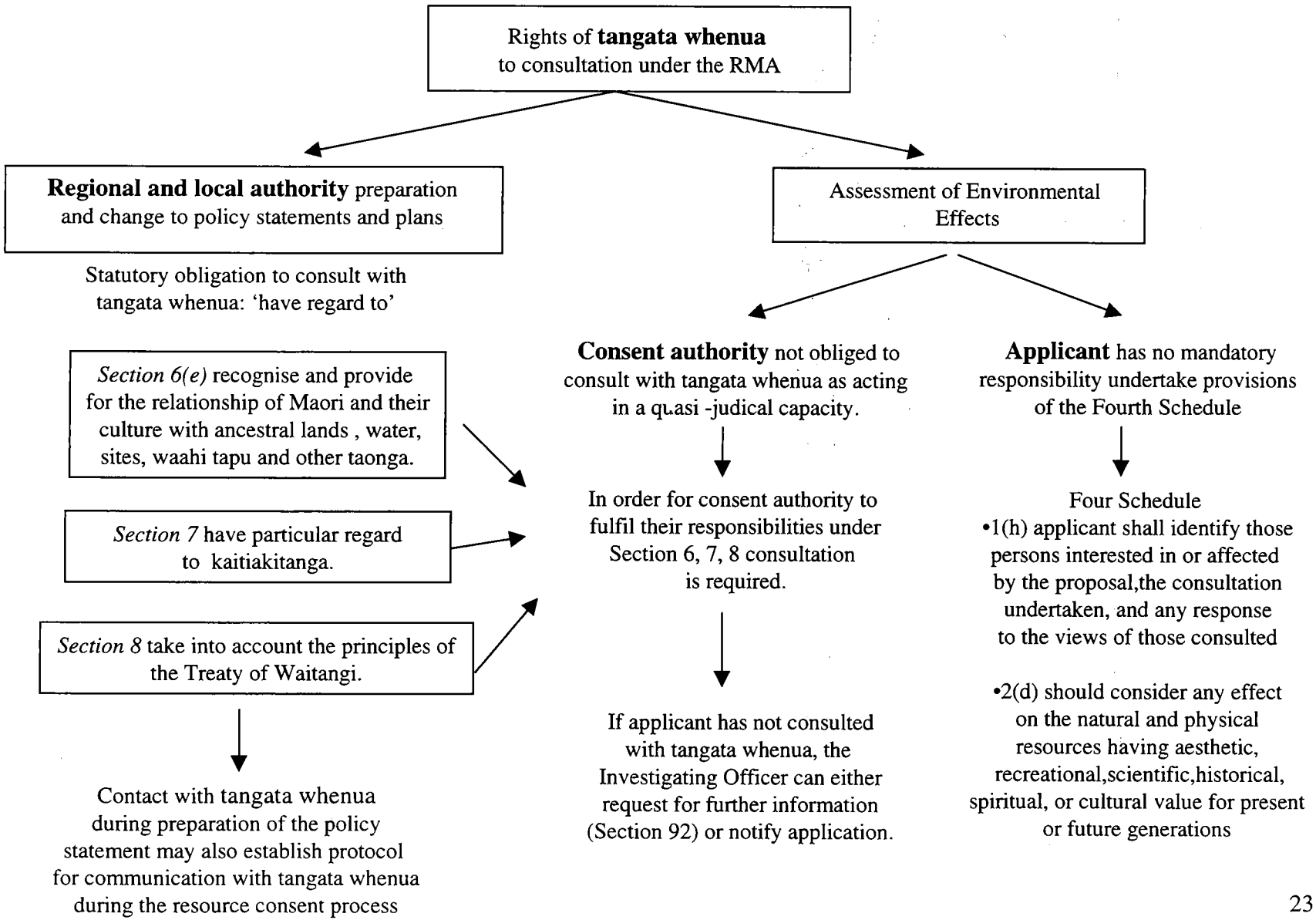
3.2.1 Responsibilities of the Local and Regional Authorities: Acting as Consent Authority

While local and regional authorities are not obliged to fulfil the Treaty obligations of the Crown, they are required to 'take into account' the principles of the Treaty, in achieving the purpose of the RMA. The RMA explicitly states that local authority consult with the appropriate 'iwi authority' regarding preparation (and changes) to district and regional plans (Section 3(1)(d)). Interpretation and application of Section 7, 6(e), and 8, implies proactive responsibilities of the consent authorities to consult with tangata whenua (Refer Figure 3.1: Rights of tangata whenua to consultation under the RMA).

The regional and local authority, acting as consent authorities, are not obliged to consult with tangata whenua as they are acting in a quasi-judicial capacity (PCE, 1998:18)[8]. They must not be seen to be supporting or favouring one party over another; or attempting to resolve opposed positions by reaching an understanding with one party at the expense of another (*ibid,* 18). The RMA implies two levels of responsibilities. Statutory responsibilities are implied in the planning process, but there is no statutory status for tangata whenua in completion of the AEEs or the consent application process, i.e., the applicant has no statutory responsibility to consult with tangata whenua, and the consent authority is acting as a quasi-judicial. In this regard, how can an AEEs take into account the principles of the Treaty of Waitangi or have particular regard to the kaitiakitanga?

[8] The RMA defines a consent authority as the Minister of Conservation, a regional council, a territorial authority or local authority whose permission is required to carry out an activity for which a resource consent is required.

Figure 3.1: Rights of Tangata Whenua to Consultation under the RMA



The Waitangi Tribunal and the Environmental Court have indicated that the consent authority has to make a genuine attempt to consult with all those who claim status as kaitiaki (PCE, 1998:23). The investigating officer (acting for the consent authority) may undertake consultation in order to gather appropriate information. By gathering appropriate information, they can assess the effects of the proposed activity on the receiving environment and/or affected parties. Concerns of affected parties can be identified either by requesting additional information (Section 92), or by notifying the applicant and calling for public submissions. In doing so, concerns of all parties can be addressed at either a pre-hearing (Section 99) or formal hearing.

Furthermore, the AEEs and consent process implies a connection between 'taking into account' and 'having particular regard to kaitiakitanga'. Judge Kenderdine found that 'the duty to take into account indicates that a decision maker must weigh the matter with other matters being considered and, in making a decision, effect a balance between the matters at issue and be able to show he or she has done so' [9]. The investigating officer needs to ensure tangata whenua concerns are balanced in assessing the AEEs. With respect to having particular regard to kaitiakitanga, the investigating officer may determine the degree to which indigenous rights are addressed in the AEEs[10], by reviewing regional policy statements or iwi management plans, or through further contact with the appropriate iwi or hapū authority.

The Reference Group has, however raised issues with regard to the role of the consent authority as quasi-judicial in the consent process, raising possible options in terms of a contestable consent process. Contractors outside regional and local management regimes are assigned administration and granting of consents (for agreed activities). This may overcome administrative costs, but it may adversely impact recognition of indigenous rights in the AEEs. Tangata whenua rights are embodied in an environmental legislative framework that assigns duty and responsibilities to the regional and local councils. Caution is required, as a private commissioner or

[9] Refer PCE (1998: 15) for comment on *Haddon vs Auckland Regional Council [1994] NZRMA 49.*
[10] Nuttall and Ritchie (1995) undertook a study on the recognition of kaitiakitanga in policy and plans. The majority of Regional Plans indicated that kaitiakitanga is the underlying principle of a Maori environmental management systems; some linked it to Tino Rangatiratanga; others indicated it has a wider interpretation than the statutory definition; some acknowledged that tangata whenua define the role, and function of kaitiaki within their rohe.

corporate body acting in the role of the consent authority is not accountable to the upholding the Crown's obligation under the Treaty of Waitangi. National guidance may be required, so is the need for recognition of tangata whenua rights in the regional and local policy statements and plans, as these policies and plans establish the barriers or parameters for resource consent conditions.

3.2.2 Having Particular Regard to Kaitiakitanga in AEEs

Having particular regard to kaitiakitanga in an AEEs requires communication with an appropriate iwi or hapū authority. The identity of the appropriate authority (for a resource consent application) is determined by tangata whenua. Regional and local authorities have no jurisdiction for defining or delegating 'iwi authority' to tangata whenua representatives (PCE, 1998:74). Interaction between tangata whenua and the regional authority, while drafting plans and policies, will allow them to identify the appropriate iwi or hapū authority. Consultation during the 'planning stage' enables tangata whenua to elaborate on their responsibilities, as kaitiaki of their rohe. These may include concerns on the state of the environment, protocol for effective communication in the consent process, or recognition of the iwi or hapū authority. Therefore, the applicant may be reliant on the local authority to direct them in the appropriate direction, i.e., in terms of who to contact, and how to communicate with tangata whenua.

Recognition of kaitiakitanga in the AEEs, with respect to identification of adverse or positive effects on the receiving environment, requires an appreciation of a diversity of socio-cultural values. Kaitiakitanga has been defined in the RMA, yet its spiritual and physical (environmental) dimensions mean that biophysical measurements may not satisfy its holistic nature[11]. As kaitiakitanga is respected within tikanga Māori, a governing authority (or applicant) cannot expect to define it, nor can they be expected to show how they have had particular regard to kaitiakitanga. If they did, they would be speaking for kaitiakitanga, rather than allowing tangata whenua to speak. Therefore, the appropriate iwi or hapu authority should be defining how the local or

[11] Kaitiakitanga" means the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Maori in relation to natural and physical resources; and includes the ethic of stewardship (RMA 1991).

regional authority is having particular regard to kaitiakitanga, in respect to tikanga Māori.

Central to Māori identity is their whakapapa (genealogy) which embodies the relationship between Maori, earth and all living and inanimate objects. Everything in the universe, inanimate and animate, has its own whakapapa and all are linked via the gods to Ranginui (sky father) and Papatuanuku (earth mother) (Roberts *et al,* 1995:4). The interconnectiveness of Māori relationship between the environment, their whakapapa and elaborate social system reflects how Maori perceive themselves in the world around them. Furthermore, Māori identity is displayed by personification of natural phenomena, whereby stories and rituals (through Te Reo and Karakia) and symbols (through Moko, carvings and weaving's) give respect to ancestors, while passing tikanga Māori onto future generations.

Planet earth is considered a vital component for respecting past ancestors and for the survival of future generations. The earth's bounty is a gift necessitating reciprocity on the part of human users in order to maintain sustainability, rather than a resource for human exploitation. Māori upheld and practiced this belief system based on reciprocity, i.e., of giving in order to receive. Strict adherence through kaitiakitanga (the act of kaitiaki) ensured that food was obtained in return for respect to the mana and mauri (spirit/lifeforce) of the taonga (earth's treasures). Kaitiaki is derived from the verb tiaki, (to guard, to protect, to keep, to watch for, to wait for), with the prefix kai denoting the doer of the action. Hence, kaitiaki can be translated as a guardian, communicating between the mauri realm and the human world.

Kaitiakitanga preserves earth's mauri, the physical life principle or the universal soul that permeates the whole of the total reality (Gray and Saunders, unpublished, p.96). The spiritual and ancestral dimensions are sustained by mauri and protected by tapu (preserved order in the community). Whanau and hapū are the caretakers, users and repositories of the knowledge pertaining to those resources within their rohe *(ibid).* They are ahi kā (fireholders) of their environment. They formulate kawa (protocols) which determine how individuals shape the environment, including their day to day actions (tikanga). The interrelatedness of concepts of taonga, tikanga and kawa is

such that protection of taonga requires protection of both tikanga and kawa (*ibid).* If tikanga is not protected, then mauri is diminished and mana removed.

The practices of kawa and tikanga differ between tribes and evolve over time. They are developed at a hapū or whanau level, where the taonga of each is different, and the environment is dynamic. This translates into diversity and richness in concepts of kaitiakitanga, which must be recognised as different mechanisms to achieve survival in different environments, and not as anomalies in traditional practice. Interaction between the representative iwi or hapū authority, and applicant and consent authority will encourage a shared understanding of the dynamic nature of kaitiakitanga, particularly with respect to tangata whenua interpretation of 'having particular regard to kaitiakitanga', under the principles of the Treaty of Waitangi.

3.2.3 Interaction Between the Applicant, Tangata Whenua and the Consent Authority

Interaction between interested parties requires a protocol for effective communication, whereby all parties are able to understand and acknowledge the different perceptions of effective communication. Māori and Pākehā have a diversity of values, with respect to managing the environment. Therefore, an acknowledgement of various perspectives will help identify issues, such as barriers to participation, appropriate communication protocol and agreed environmental outcomes.

Participation in the communication process is essential for effective communication. Participation barriers, for tangata whenua, in environmental policy and decision making (advocated in the RMA), include lack of resources, time, funds, staff and skills (MfE, 1998). Yet, a major barrier to participation is the western environmental ethic. Tangata whenua views on environmental management is based on a "spiritual and timeless relationship, for which Te Reo Maori me ona tikanga (language, thoughts, values and practise) are the principal means of expression and empowerment" (Jarman et al, 1996: 89). Tangata whenua are advocates of their own parameters for resource management (*ibid*). While the RMA expresses rights of tangata whenua, it may not promote a consent process that acknowledges tangata whenua responsibilities as kaitiaki.

As a result, tangata whenua have often experienced difficulties in understanding what is required of them in the consent process, such as whether they should expect to be approached in preparation of the AEEs or wait till a consent is notified and make a submission (or not). Tangata Whenua have delivered an ad hoc or reactive response that hasn't reflected their real concerns (MfE, 1998:21). Regional and local authorities address tangata whenua procedural concerns, they must also instigate a process that recognises tangata whenua rights to participate. Consultation is seen as a means for encouraging participation, but it does not strengthen tangata whenua powers to influence policy determination, or outcomes from environmental management (Gray, M. unpublished: 106). Alternatively, effective communication can be achieved when the concerned parties are satisfied with the outcome of a negotiated process resulting in a collective decision, i.e., the degree of satisfaction that each party has in the negotiating process can indicate the success of the negotiation[12].

As the applicant completes the AEEs before submitting for resource consent, indigenous rights may only be recognised in the AEEs if interaction between tangata whenua and the applicant occurs during the pre-application period. The PCE (1998) concluded on their findings regarding pre-applicant contact as follows:

"Direct negotiations between tangata whenua and resource consent applicants, particularly when undertaken as early as possible in the stages of developing a project proposal, give strong opportunities for good environmental outcomes to be achieved where sensitive and creative design approaches ensure that tangata whenua concerns are accommodated" (PCE, 1998: 120).

Pre-application contact is an opportunity for the applicant to inform tangata whenua about their proposed project. Similarly, it is an opportunity for tangata whenua to express their support or concerns for the project. Pre-application contact is therefore important for fulfilling the guidelines of the Fourth Schedule, Section 1(h). Ideally, the outcome of effective communication is a decision that reflects cooperation between each party. In the case of indigenous rights in an AEEs, the AEEs indication

[12] Negotiation can be defined as the interaction between parties discussing issues of common concern with a view to finding mutually accepted solutions. The communication is face to face, and the decision outcome is remains with those involved in the negotiation process (Pavelka, 1992:1).

of tangata whenua concerns could be shown through the criteria set out in Section 3.1.1.

The applicant, however, has no statutory responsibility to consult with tangata whenua, therefore the consent process subsequent to application is an integral part (in many cases by default) of recognising indigenous rights. As a result, the consent authority, in its role as quasi-judicial, must ensure that indigenous rights are recognised in the process, thus allowing each party to state their position, identify appropriate issues and formalise a protocol for resolving disputes.

The position taken by all parties will undoubtedly reflect their responsibilities and/or concerns. Each party's position is embedded in power relations the knowledge of these relations will allow them to make change (Harcourt, 1994). Variables such as historical encounters, cultural sensitivity, economic rationality, indigenous rights and consent procedures, will influence the position of each party and their willingness to cooperate. If the communication process encourages recognition of each parties position, issues can be identified and a resolution sort. While potential disputes cannot be avoided, they can be anticipated. Thus, 'precaution' is required to encourage flexibility between differences and a possible need for change (Harcourt, 1994).

Formalisation of disputes is interrelated with positional stances and issues regarding the proposed project. If each party is unprepared to identify and resolve issues, instead uphold their position, the polarisation inherent in position taking can distort a clear understanding of the problems to be addressed (Pavelka, 1992:1). Therefore, as part of this process, a pre-hearing process is used for public submitters to raise their concerns and for the applicant to respond. Furthermore, if issues cannot be addressed, a hearing process is used, which attempts to resolve the disputes before reaching the environmental court.

3.3 Summary of potential issues in the legislative framework

Although the applicant has no statutory responsibility to consult with tangata whenua in preparation of the AEEs, it is 'good practise' to do so. The consent authority is responsible for administering the consent application, ensuring that all 'affected parties' are adequately informed and the environmental and socio-cultural effects are consistent with their regional or local plan to sustainably manage the natural environment.

In order to identify and recognise indigenous rights in AEEs an interaction between all of the parties is vital, whereby the outcome of having particular regard to kaitiakitanga focuses on the mauri of the natural environment, and is reflective of a communication process that respects tikanga Māori. As the applicant has no mandatory responsibilities to consult with tangata whenua, recognition of indigenous rights in the AEEs is dependent on either the goodwill of the applicant or the proactive actions of the consent authority to encourage pre-application contact. Either way, in order to promote indigenous rights in AEEs:

- requirements of the applicant could be remedied,
- the responsibilities of the consent authority to recognise tangata whenua rights could be made clearer,
- tangata whenua involvement could be made more explicit; or
- continue to rely on the consent authority to promote indigenous rights de facto.

Given the uncertainty of the indigenous rights in AEEs, it is worthwhile evaluating a case study using the legislative criteria set out in Section 3.1.1 and the analytical framework discussed above.

4 Te Runanga o Rapaki: A Case Study on Recognition of Indigenous Rights in AEEs

Chapter 3 identified the legislative framework for indigenous rights in AEEs. In order to test this framework a case study is used and described in this chapter. Banks Peninsula District Council (BPDC) have applied for a 35 year resource consent to discharge treated sewage from their Governors Bay Sewage Plant into Whakaraupo (Lyttelton Harbour). Sewage discharge from the existing facility was covered under water right NCY 860415, granted in 1987 and expired 30 April 1997 (Montgomery Watson, 1998: 1). BPDC is therefore the applicant applying to the Canterbury Regional Council (CRC) as consent authority. This application has significant implications for te Runanga o Rapaki, as ahi kā (firekeeper) and kaitiaki of Whakaraupo, thus they are the affected indigenous party. Section 4.1 discusses the Historical Background of Rapaki Bay, Whakaraupo. Section 4.2 identifies rights of te Runanga o Rapaki, representative of the people of te Hapū o Ngati Wheke. Section 4.3 sets out the current status of the resource consent application.

4.1 Historical Background of Rapaki Bay, Whakaraupo

Tamatea was known to his Waitaha tribe as Tamatea-Pokai-Whenua (Tamatea the Seeker of Lands). He travelled south from the North Island by Canoe in the mid-fourteenth century. On his travels, Tamatea entered Lyttelton Harbour, naming it Whangaraupo because of the raupo that grew around the foreshore of the harbour (Couch, 1987: 34). Tamatea continued his journey south by sea, and returned to the surrounding hills of Whangaraupo before travelling home. The following century, Ngati Mamoe tribe travelled south, and were followed by the Ngāi Tahu tribe in the eighteenth century (*ibid:* 36). Te Rangi Whakatapu, chief of Ngāi Tahu, accompanied by his two sons, Te Wheke and Manuwhiri entered Whangaraupo killing the Ngai Mamoe or driving them from their settlements. Te Rangi met resistance from Ohinehou (a settlement at Lyttelton), thus travelled further up the inlet to find Rapaki Bay. Te Raupo drew his canoe to the shore, stepped ashore and laid his rapaki (waist

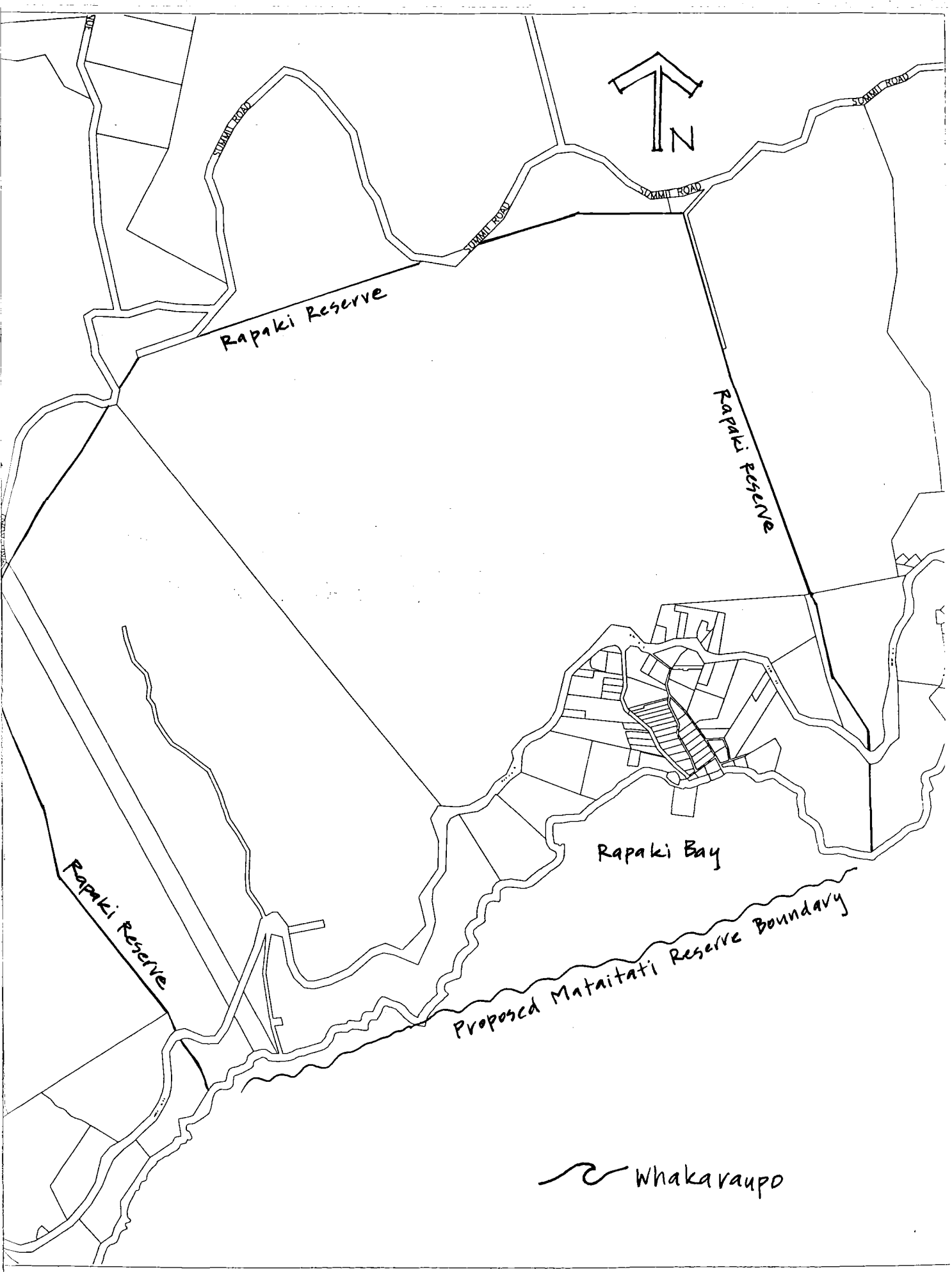
mat) on the ground, thus making the valley tapu (*ibid:* 37*)*. The full name of the bay is Te Rapaki o Rangi Whakaputa. Te Wheke stayed at Te Rapaki, continuing skirmishes with Ngati Mamoe, while Manuwhiri was given the captured pa at Ohinetahi (Governors Bay) (*ibid*: 38).

In the early nineteenth century, Te Rauparaha along with warriors from Kapiti Island travelled south killing many tribal people of the South Island. Unfortunately local wars between the different hapū of Ngai Tahu of Whangaraupo worked in Te Rauparaha's favour, at least until the local tribes banned together to fight. Te Rauparaha later converted to Christianity, prompting him to release Ngāi Tahu captives, freed to return south (*ibid:* 46).

In 1849 the Port Cooper Deed ceded all the lands of Port Cooper to the Queen, in return allocating reserves to natives at Kaiapoi, Rapaki and Port Cooper. Each tribe was allocated land based on occupation of different portions of the country (Williams W. representative for Rapaki in The Native Land Court, 1868, in Couch, 1987: 48). Walter Mantell was responsible for the settlement of land on the Banks Peninsula. The Waitangi Tribunal found in the Ngai Tahu Report the following:

"On 27 July Mantell was present at Rakapi "with all the natives" and there marked out a reserve of 856 acres. But, as he later explained in case this should seem excessive, the surveyor Carrington estimated the extent of the arable land is less then 60 acres" (1991: 560).

In 1857 a full census of the Canterbury Māori reserves was taken, showing a population of 72 at Rapaki. Over the whole reserve (refer Map 4.1 for area of reserve), including the steep hillside there was 11.8 acres available, which 'was grossly inadequate, especially given the poor quality of most of the land' *(ibid).* Given the rich supply of kaimoana in Whakaraupo, residents may have been happy with this deal as they still had access to the coastal area surrounding the reserve. Upon return of captives from Te Rauparaha, however, there was disagreement as to who was entitled to land within the reserves (Couch, 1987: 48).



Map 4.1 Rapaki Reserve

Scale 1:13250

0 200 400 600 800 1000 1200 1400 1600m

Rapaki Bay

In 1868 disagreement over Rapaki Reserve was settled in the Native Land Court. Natives of Kaiapoi, Rapaki and Port Levy were claiming particular rights to land in the Reserve areas. Mr Buller, a Native Commissioner ruled in the Kaiapoi Reserve, that Natives should 'share alike when their reserves are apportioned (*ibid:* 46). However, the residents on the Rapaki Reserve strongly opposed such a ruling. Instead, the Native Land Court found that 'The Kaiapoi Natives' were not entitled to claim any share in the Rapaki Reserve by reason of their descent from remote ancestors common to them and the persons similarly styled 'The Rapaki Natives'. Iharaira Taukaha, the chief claimant for Rapaki, was asked to submit a list of persons whom he felt were justly entitled to share in the division of the Reserve (*ibid:* 50), these names being accepted by the Court.

History indicates that there has been many difficult times for the people who first settled in Whangaraupo. Interaction with settlers introduced further disputes, both between the Natives and the Natives and Settlers. Arthur (Hiwi) Couch concluded in "Rapaki Remembered" by saying:

"Sometimes I think of Te Ari Pitama when he was addressing us, saying, 'Take one stick in your hand and bend it. It breaks. But take several and bend them; do what you will, they will not break'...even now I feel that sometimes we are not 'tied together', and our village suffers, and so I say, join together, and when you do, hold fast to that which you know is RIGHT, because you have all said IT IS RIGHT.

To you, dear reader, think not that your fellow New Zealanders of long ago lived only to do battle. Because they lived so close to Mother nature, their thoughts traversed this area also, hence the many beautiful poems and wise proverbs they composed and chanted, alas so rapidly disappearing" (Couch, 1987: 86).

Rapaki Reserve, today is experiencing a resurgence of returning relatives, requiring allocation and management of available land (pers. comm. Couch, 1998)[13]. Land limitations require careful consideration of land use, particularly with regard to multiple ownership rights (established under the Native Land Courts). As rate payers, Rapaki Bay's residents are entitled to amenities such as drinking water and roading, opportunities for residential development and access to the sewerage system. Te Runanga o Rapaki, wish to be self determining in developing their residential areas

[13] Current population of Rapaki is approx 60.

(Rapaki, 1995:8). Rapaki requires active support from BPDC to develop a residential settlement which meets the future requirements of residents if Rapaki Reserve, while allowing BPDC to uphold their responsibility to provide amenities and services such as roads and rubbish collection.

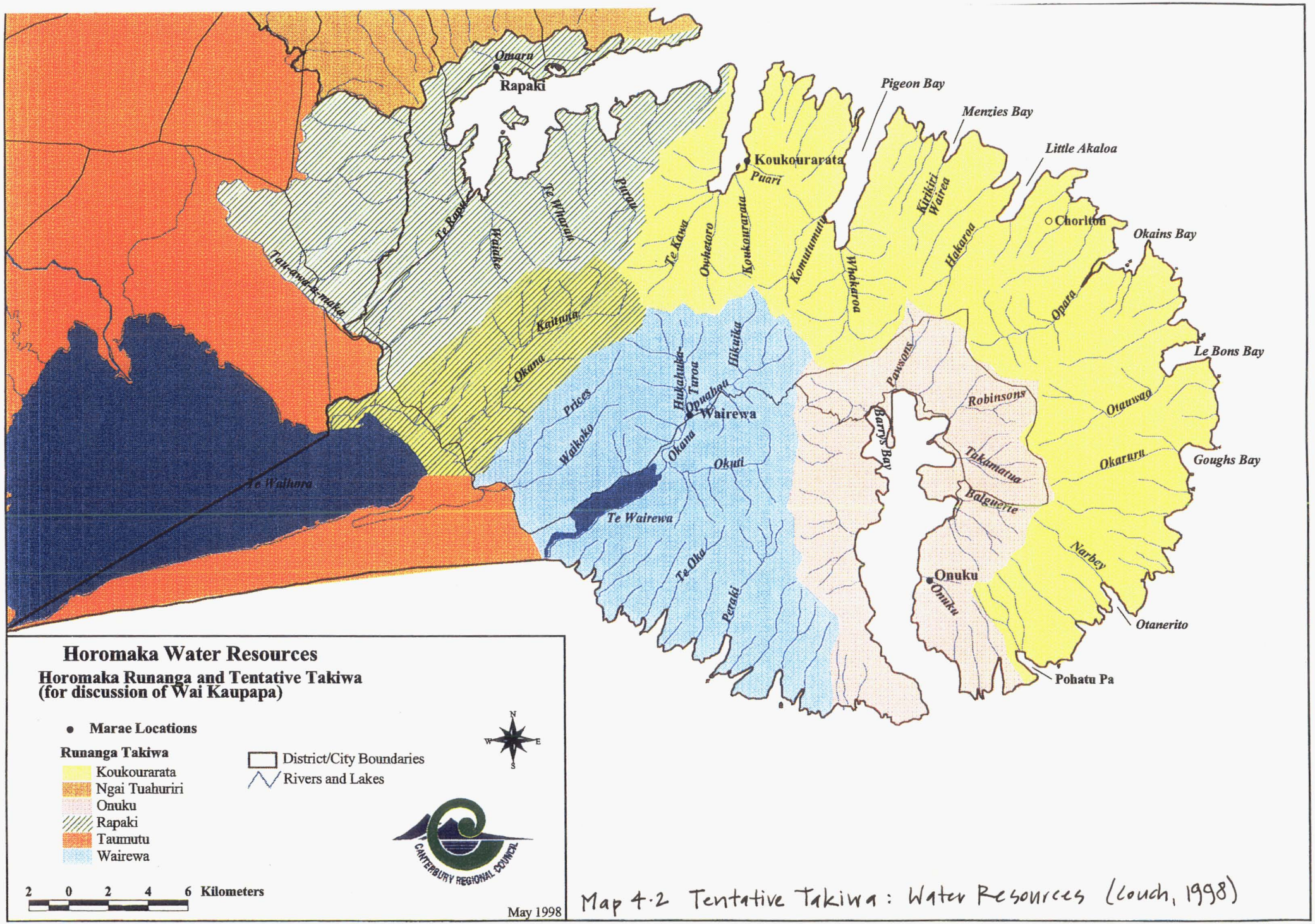
Restoring kaitiakitanga for the people Te Hapū o Ngati Wheke is symbolised by improving the mauri (lifeforce) of Whakaraupo including: water quality improvement; enhancing and restoring the fish life; establishing bylaws as part of their application of a mataitai reserve to manage activities in Rapaki Bay[14]; and starting a creek enhancement and revegetation project on the reserve[15]. Restoring kaitiakitanga is also symbolised by the recognition of Te Runanga o Rapaki rights in environmental policy design and implementation, particularly those impacting Whakaraupo. Over the past decade, Te Runanga o Rapaki has opposed a number of the sewage discharge consents, but they have failed consistently to make an impact. Among the people of te Hapū o Ngati Wheke there is a feeling of futility. While Te Runanga o Rapaki concerns have been talked about, or written in plans and submissions, they are not recognised in practise (pers. comm Couch, 1998). Te Runanga o Rapaki is concerned about this, particularly as Māori are representative partners under the Treaty of Waitangi.

[14] Under the Fisheries (South Island Customary Fishing) Regulations 1998, Section 20 (a) a mataitai reserve can be established in an area if the Minister is satisfied that there is a special relationship between the tangata whenua making the application and the proposed mataitai reserve.
[15] Te Hapu o Ngati Wheke has also set out a restorative program for the streams and rivers feeding tin Whakaraupo, refer Appendix 3 for tangata whenua values associated with freshwater bodies.

4.2 Rights of Te Hapū o Ngati Wheke as Hapū Authority

Te Hapū o Ngati Wheke is representative of the people of Rapaki Bay, and with support from other te hapū under the Te Runanga o Ngāi Tahu Act (1996), they are the recognised hapū authority as ahi kā of Whakaraupo, responsible to act as kaitiaki of their rohe. An 'iwi authority', as recognised in the RMA (Section 3(1)(d)), is defined as 'the authority which represents an iwi and is recognised by that iwi as having authority to do so' (CRC, 1998a: 302). Te Runanga o Rapaki, one of nine Papatipu Marae currently established in the Canterbury Region, is the 'administrative body' of Te Hapū o Ngati Wheke, who have rights as Tino Rangatiratanga under the Treaty of Waitangi, of their village and as kaitiaki of Whakaraupo. The takiwa of te Runanga o Rapaki rohe surrounding Whakaraupo often depends on the function or purpose of the boundaries, e.g., Map 4.2 shows the location of Rapaki and tentative runanga takiwa for water resources on the Banks Peninsula.

Kaitiakitanga under the RMA 'is inextricably linked to Tino Rangatiratanga as it may only be practised by those iwi, hapū, runanga or whanau who possess Tino Ranagatiratanga and manawhenua in their tribal area (CRC, 1998a: 41). Generally, there is an issue over whose tikawa a resource consent application is being made, as te runanga are resistant to draw lines on the map and stipulate boundaries (per comm. Couch, 1998). Te runanga have shared interest in the resources of the region, and there is good reason not to define the boundary according to lines, although various runanga are responsible for their particular rohe *(ibid).*



Horomaka Water Resources

Horomaka Runanga and Tentative Takiwa
(for discussion of Wai Kaupapa)

- Marae Locations

Runanga Takiwa

- Koukourarata
- Ngai Tuahuriri
- Onuku
- Rapaki
- Taumutu
- Wairewa

District/City Boundaries
Rivers and Lakes

N W E S

2 0 2 4 6 Kilometers

CANTERBURY REGIONAL COUNCIL

May 1998

Map 4.2 Tentative Takiwa: Water Resources (Couch, 1998)

4.3 Banks Peninsula District Council's (BPDC) Sewage Discharge Application

BPDC application to discharge sewage into Whakaraupo has raised some important issues regarding Te Runanga o Rapaki's rights as representative of hapu authority in the overall management of Whakaraupo. Their rights not only include participation in practices for improving the mauri of Whakaraupo, but also in the design and implementation of environmental policy. The following section and Figure 4.1 clarify the current status of BPDC's application.

BPDC made a resource consent application to CRC in December 1997. Currently (October 1998) the application is on hold, pending CRC's request for additional information from BPDC. Figure 4.1 shows the timeline and process of the consent application, including pre-application contact with tangata whenua, and CRC's actions upon receiving the application.

Pre-application contact between BPDC and Ngati Wheke occurred on 29 July 1997, in a meeting with the Upoko for Ngati Wheke and the Project Manager of BPDC. They met to discuss 'issues relating to the discharges of treated effluent into Lyttelton Harbour' (Montgomery Watson, 1997:18). After the meeting, the Project Manager drafted a letter indicating the outcome of the meeting. However, the letter (submitted as part of the AEEs) was unsigned by both parties (Refer Appendix 4 for a copy of the letter). A hui was held in February 1998 to discuss concerns of te Hapū o Ngati Wheke. CRC publicly notified the application early in 1998. Submissions were received, including one from Mr Couch, representative of te Runanga o Rapaki. On 27 August 1998, a pre-hearing meeting was held. Mr Couch raised his concerns regarding the discharge of sewage into Whakaraupo. They included:

- The need for an overall environmental management plan for Whakaraupo
- Sewage discharge is culturally insensitive, adversely effecting the gathering of kaimoana in the area.

- Since 1987, Rapaki Bay has experienced a deteriorating quality of water a major contributor is the sewage discharge from Governors Bay.
- The change in the location of discharge has brought the discharge point closer to Rapaki Bay.
- There are continued concerns regarding the quality of the monitoring results including the location and timing of the monitoring before and after discharge.
- Te Runanga o Rapaki's accepted water quality standard in the area is not more than 14 coliform-forming units per 100ml measured in shellfish flesh.
- Te Hapū o Ngati Wheke has made an application for a mataitai reserve in Rapaki Bay, in order to set bylaws for the sustainable management of kaimoana, and to monitor and control activities in the Bay.
- The ability of the operation plant to meet and/or uphold water quality standards from their sewage discharge, and enforcement of consent conditions.
- Acknowledgement of the Akaroa Sewage discharge consent conditions including:
  - monitoring of the concentration of faecal coliforms in the mussels growing on the two rocky outcrops either side of the treatment plant (CRC(b), 1998:6, clause 13).
- Consultation between the parties could be improved.

The Project Manager, representative of BPDC responded with the following points:

- Asked Mr Couch to be more specific regarding Te Runanga o Rapaki's concerns.
- Commented that the sewage treatment plant will meet water quality standards required in the resource consent.
- BPDC paid a premium to apply for, and meet conditions of the resource consent for sewage discharge from the Akaroa treatment plant.
- BPDC is setting up a harbour working group, involving various parties, including Rapaki, with an interest in the long term management of the harbour.

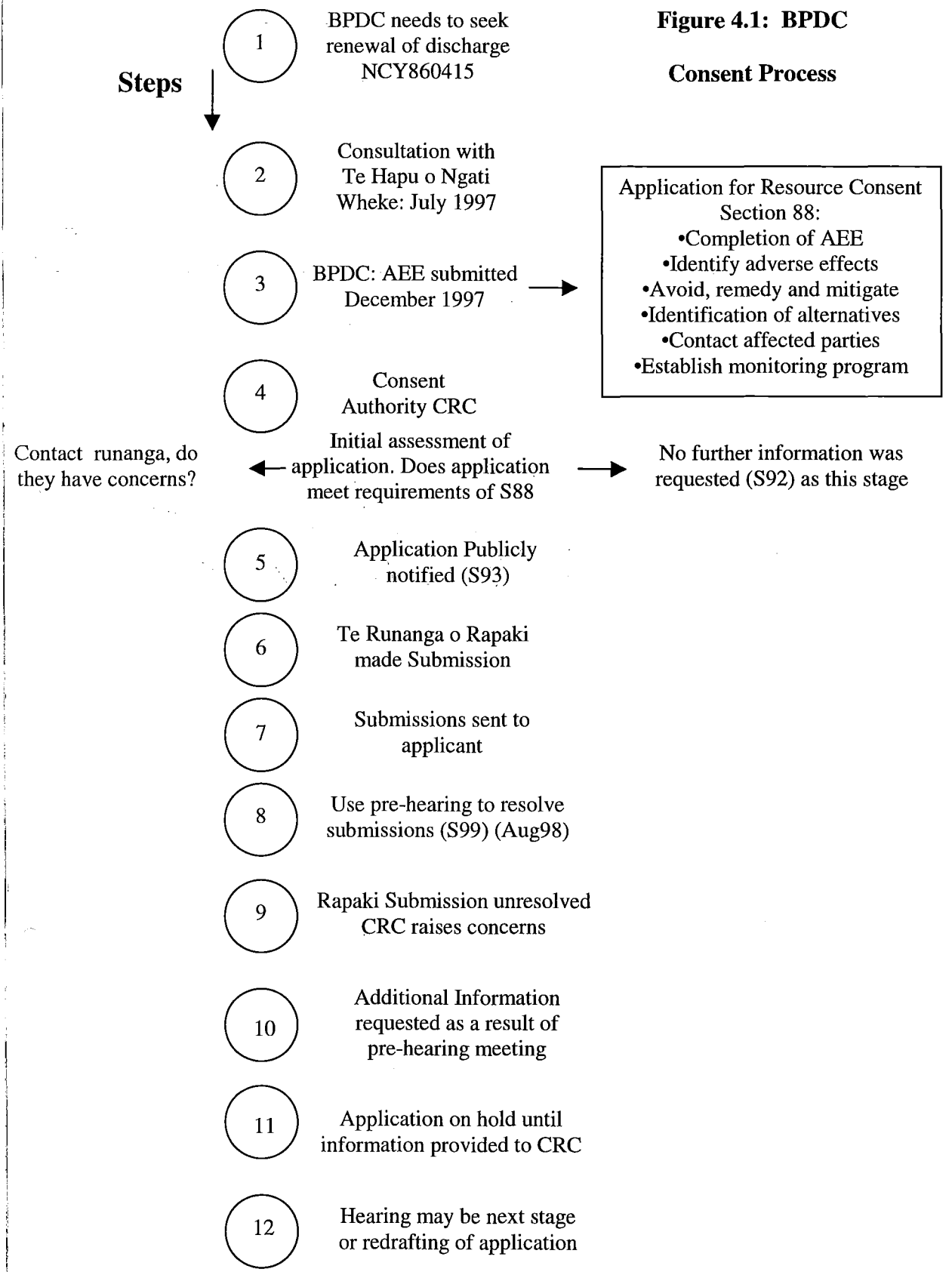
The Investigating officer for CRC raised concerns regarding the ability of the plant operations to continually meet standards required in the previous consent, and also the effectiveness of the monitoring programmes to determine if these standards are being met. All parties were unable to come to an agreement regarding concerns raised by either te Runanga o Rapaki or CRC thus the meeting was concluded by CRC stating

they will send out a letter requesting additional information. CRC requested additional information in the following areas:

1. *"A complete and up-to-date set of effluent monitoring results, sourced from your contractors and the CRC.*
2. *A report on the consultation undertaken with Rapaki Runanga, including mechanisms established for on-going consultation.*
3. *The methods to be used to ensure the effluent standards will be consistently achieved.*
4. *A proposed programme to monitor the effects on the environment of the discharge".* (CRC: 1998c).

Under Section 92 (RMA) the consent process is on hold until additional information has been provided to the investigating officer. The following chapter discusses why Rapaki's concerns were not recognised in the AEEs, thus identifying specific issues regarding the recognition of indigenous rights in AEEs.

Figure 4.1: BPDC Consent Process



5 Analysis of Case Study and Identification of Key Issues

This chapter raises a number of key issues, with respect to recognition of indigenous rights in AEEs. Table 5.1 uses the criteria of Section 3.1.1 to evaluate the recognition of indigenous rights in AEEs. Issues are drawn from an evaluation of the case study using the legislative and analytical framework discussed in Chapter 3.

5.1 Pre-application Contact between BPDC and Ngati Wheke

Pre-application contact between BPDC and te Hapū o Ngati Wheke started with a meeting between the Project Manager (BPDC) and the Upoko (Ngati Wheke). As a result of this meeting a letter was drafted, and included in the AEEs. However the letter was unsigned, indicating possible uncertainty in communication between the two parties. Firstly, one-on-one communication may be appropriate for some issues, but not for addressing issues that effect the whole community. Secondly, written communication in the form of a letter requesting agreement on complex issues may have misinterpreted the position of Ngati Wheke. Thirdly, post-application contact did not appear to address the issues or concerns raised by Ngati Wheke. As a result the AEEs, did not explicitly state the concerns of Ngati Wheke or allow BPDC to make adequate responses. Table 5.1 indicates the degree to which the criteria in Chapter 3 have been meet in the AEEs.

Table 5.1 Evaluation of the recognition of Indigenous Rights in the AEEs, using Criteria based on the RMA Legislative Framework (refer Chapter 3)

Fourth Schedule 1(h)	Set Criteria	Evaluation of AEEs based on Criteria
Identification of those persons affected by the proposal.	• Identification of iwi or hapū authority contacted. • Identification of people contacted within iwi or hapū	✔Te Hapū o Ngati Wheke/ Te Runanga o Rapaki ✔Upoko Mr Gillies
Consultation undertaken.	• Indication of how the consultation was undertaken. • Indication of the current stage of communication between each of the parties including further communication required and/or difficulties experienced.	✔ Consultation on a one to one basis. ✶No indication of any further communication required between each party. ✔Indication of difficulties experienced in communication, such as availability of Mr Gillies or through the inclusion of unsigned letter in AEE
Views of Tangata Whenua.	• Concerns, issues or support identified by tangata whenua, i.e, the position tangata whenua have as kaitiaki, with regard to effects (culturally, spiritually or physically),	✔Te Runanga o Rapaki concerns regarding deteriorating quality of water ✶ But specific issues regarding te Runanga o Rapaki's position were not identified. ✔Te Whakatau Kaupapa was refereed to, particularly the cultural insensitivity of coastal sewage discharge
Responses from tangata whenua. ✔Positive ✶Negative	• Expression of the outcomes of communication to date. • Responses the applicant wishes to make, either in agreement or not, particularly with regard to identification of alternatives. • Indication of the degree of integration of tangata whenua values or ideas in the AEEs. • Identification of areas of agreement or joint initiatives between the two parties.	✶Outcome of communication was ineffective in identifying possible resolutions. ✶Response BPDC made in the unsigned letter indicates that their position was not agreed upon by Te Runanga o Rapaki. ✔Alternatives such as land based discharge and sewage piping were identified to address Te Whakatau Kaupapa. ✶ Alternatives were discarded in favour of the current proposal. ✶No joint initiatives were reached between BPDC and Te Runanga o Rapaki.

Table 5.1 indicates some positive aspects in terms of the AEEs meeting the criteria of Chapter 3, including BPDC's contact with affected persons and consideration of alternatives to address concerns raised in Te Whakatau Kaupapa. However, the AEE did not identify and address specific issues concerning te Runanga o Rapaki, nor did it indicate if further communication was planned (or required) between parties. As a result the outcome of communication was ineffective in identifying possible resolutions, such as other feasible alternatives or developing joint initiatives. Table 5.1 suggests the applicant (BPDC) did not do a thorough job in recognising the concerns of te Runanga o Rapaki. There are a number of reasons for this, helping identify key issues for recognising indigenous rights in AEEs.

The discharge of sewage into Whakaraupo and its impact on the receiving environment is a complex issue, best addressed on a face to face basis at a community level (pers comm. Couch, 1998). From discussion with Mr Couch, the responsibilities of te Upoko are various, in some cases te Upoko can speak quite clearly for Te Hapū o Ngati Wheke, and in others it is a shared responsibility. The meeting between the Project Manager and te Upoko may have been a means to communicate the position of Ngati Wheke regarding the cultural insensitivity of the sewage discharge. As the letter states, the meeting allowed te Upoko to express Te Hapū o Ngati Wheke's continued desire to improve the quality of water in Whakaraupo. In this case te Upoko was speaking for te hapū.

The unsigned letter, however, expresses te Upoko support for the Regional Council's approach to granting of resource consents and that the quality of water will improve through "continued improvement of effluent quality standards, as technology and practicality permits"(Montgomery Watson: 1998). Issues are not always understood or appreciated through the use of written communication (pers. comm Couch, 1998), suggesting that the letter assumes a lot while avoiding a number of issues pertinent to the application. The letter, in expressing te Upoko support of the application process appears to go beyond te Upoko authority as the sewage discharge is a community concern, requiring community participation. Instead, the AEEs indicates that te Upoko was unavailable for further contact, due to commitments elsewhere. Additionally, the AEEs indicates te Hapū o Ngati Wheke's interest in a field trip to the operation plant, but this did not eventuate.

Subsequent to completion of the AEE, a legitimate effort from both parties was made to communicate through a hui (February 1998). The people of te Hapū o Ngati Wheke had an opportunity to voice their collective concerns, while allowing BPDC to respond. However, the outcome of this hui made no obvious impression to each party's position, as discussed in Section 5.2 and 5.4. Te Hapū o Ngati Wheke, represented by te Runanga of Rapaki, are enforcing their rights to improve the mauri of Whakaraupo, yet appear to be experiencing dissatisfaction in the overall 'management' of Whakaraupo (refer Section 5.3 on CRC Coastal Plan)

5.2 Insensitivity of Coastal Sewage Discharge

Historically, gathering kaimoana for te Hapū o Ngati Wheke was an important food source, and enabled the people of Rapaki Bay to respect their spiritual and physical connection to Whakaraupo. Kaimoana would be shared among the elders, and used to welcome and host visitors (pers comm. Couch, 1998). Today, there is not enough kaimoana to share around. The water quality has deteriorated and the sea life disappeared. While there are a number of contributors, te Runanga o Rapaki's main concern is the continued pollution destroying the mauri of waitai (seawater). Sewage discharge into Whakaraupo contributes to its deterioration. So, Rapaki Runanga are upholding their responsibility as kaitiaki, and wish to restore the quality of waitai, to a standard that will return kaimoana to Whakaraupo (*ibid*).

BPDC were unable to explicitly express te Runanga o Rapaki's concerns in the AEE. They did acknowledge the policy of Te Whakatau Kaupapa (Refer Appendix 4) and identify alternatives to address the cultural insensitivity of coastal sewage discharge. BPDC's response to Te Whakatau Kaupapa was to identify and consider alternatives such as the feasibility of land disposal and use of sewage pipes. The AEEs indicates that these alternatives were weighted as impractical compared to the existing operation. The AEEs evaluation of these alternatives concluded as follows:

- topographical and ecological characteristics of land surrounding Whakaraupo mean that land disposal is not a viable option,

- high financial costs of installing pipelines for transportation purposes means this is not recognised as a viable option.

Similarly, the AEE makes specific reference to the benefits of maintaining the current discharge system, such as:

- recuperation of the sunk cost incurred in the existing plant, including its maximum use of the plant over its lifetime duration of 50 years;
- the ability of the plant to meet the proposed quality standards for effluent discharge;
- the initial findings, prior to beginning the project in 1986 and subsequent research, show no adverse effect on the receiving environment (Montgomery Watson, 1998:22).

Although BPDC has considered the concerns of Te Whakatau Kaupapa, they continue to believe that their sewage discharge operation satisfies water quality standards (required as part of the application) for Whakaraupo. If BPDC and te Rapaki o Runanga had been able to acknoweledge specific issues regarding the discharge proposal, they may have been able to identify agreeable alternatives. As the AEEs was prepared by the applicant it supported BPDC's position as advocates of maintaining the current sewage disposal techniques. The role of the consent authority, while acting with quasi-judicial responsibilities, is important for ensuring te Runanga o Rapaki are involved in the consent process, including opportunities for Rapaki to raise their concerns and/or scrutinise the AEEs for its integrity (in relation addressing their concerns). Similarly, regional policy statements and plans are an integral part of ensuring te Rapaki o Runanga concerns are weighted in the consent process, as they establish a framework for implementing the actions aimed at achieving the purpose of the RMA.

5.3 Significance of CRC Proposed Regional Coastal Environmental Plan

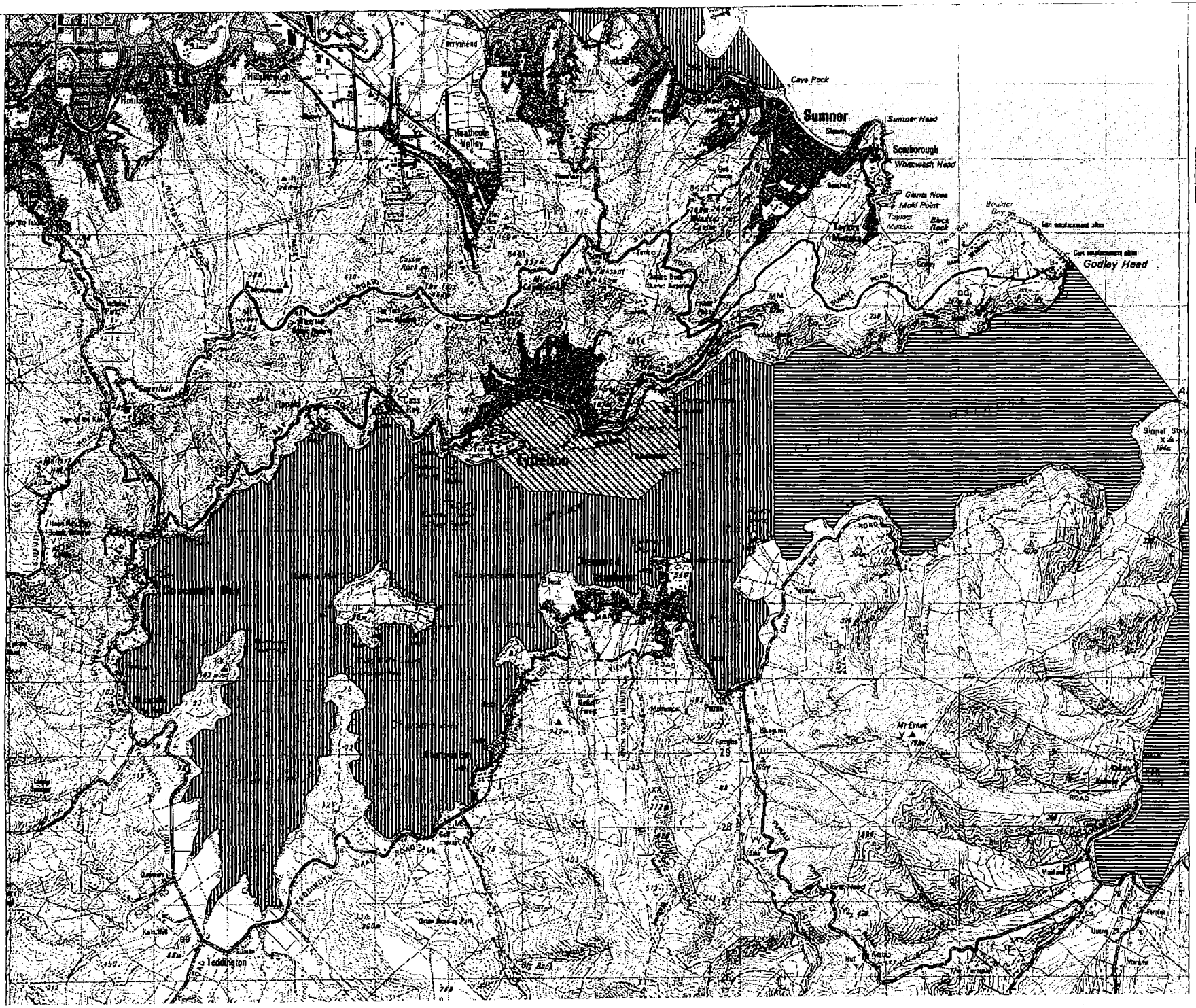
The CRC has released variations to their proposed Coastal Management Plan (CRC, 1998d). The variations include a number of proposed water quality standards for Whakaraupo (refer Map 5.1 proposed water standards for Whakaraupo). The proposed

standard surrounding Rapaki Bay and the majority of Whakaraupo is 'contact recreation'[16]. Te Runanga o Rapaki and other te runanga were consulted regarding the water quality standard prior to the proposed amendments. Rapaki Runanga have continually asserted their position on the standard of seawater, but they have not been heard (pers comm. Couch, 1998), i.e., te Runanga o Rapaki propose a water quality appropriate for gathering kaimoana[17]. What they would like to see happen is an environmental research plan that integrates the various sources (or activities) impacting Whakaraupo, with all parties collectively contributing to improving the quality of water (*ibid*).

The CRC's position is quite clear, as the Coastal Plan is for a ten year period, they propose a water standard of 'contact recreation' which they believe can be achieved within the ten year period (pers. comm. Gregory, CRC, 1998). The CRC can only influence the activities that pollute the harbour at source, such as sewage discharge. Once the water quality standard has been reached, and this is dependent on both land use changes and controls to direct discharges, the target standards will be reviewed by CRC (CRC, 1998d:7-5).

The quality of water at Whakaraupo represents a conflict of values, whereby CRC are operating within their jurisdiction for setting coastal policy within a ten year time frame and enforcing water standards through resource consent applications. By contrast Te Runanga o Rapaki, as kaitiaki, value the improvement in the water quality for future unborn generations. They do not distinguish between separate management regimes over short-term timeframes, or distinguish between responsibilities over pollution from sewage discharge activities; visiting ships; or agricultural run off.

[16] The median faecal coliform concentration shall not exceed 200 coliform- forming units per 100ml (CRC, 1998: Schedule 4-3).
[17] The median faecal coliform concentration shall not exceed 14 coliform-forming units per 100ml (*ibid* Schedule 4-5).



Map 1.5 Water Quality Areas - Lyttelton Harbour (west), Outer Lyttelton Harbour and the Operational Area of the Port of Lyttelton

Map 5.1
Proposed Water Standards for Whakaraupo (CRC, 1998)

Te Runanga o Rapaki under the RMA legislative framework are representative of hapū authority. They have rights to participate in regional and district policy, such as the proposed variations to the CRC Coastal Plan. In terms of consent applications, the legislative framework implies a genuine obligation for the consent authority (acting in a quasi-judicial role) to consult with tangata whenua (Section 3.2.1). Te Runanga o Rapaki do not separate their rights between recognition in the Coastal Plan and expression of their concerns in the AEEs or consent process. Rather, they are part of an overall right to participate in environmental management of Whakaraupo. Te Runanga o Rapaki may have recognised that as the Minister of Conservation grants the consent they can express their rights as tangata whenua under the Treaty with a Crown Authority[18].

Furthermore, te Runanga o Rapaki's rights as hapū authority is inconsistent with BPDC's as applicant, thus contributing to the conflicting of positions. BPDC have no statutory responsibility to consult with Rapaki, who tangata whenua rights in the pre-application period, throughout the consent process and in drafting of the Coastal Management Plan[19]. Both parties are reliant on the consent process to resolve conflicts over statutory positions.

5.4 Parties are Reliant on Consent Process to Resolve Application Issues

During pre-application contact, te Runanga o Rapaki and BPDC were unable to identify and address collective concerns regarding sewage discharge from Whakaraupo, as a result there was a lack of clarity and/or resolution of issues in the AEEs. Each party appears, for a number of reasons, to have taken positional stances on the outcome of the consent application. Pre-application communication could have identified some of the issues rather than entrench positions further.

[18] The sewage discharge is identified as a 'Restricted Coastal Activity' under Section 1.10 (a) of the New Zealand Coastal Policy Statement. While a Hearing Committee reviews the application, the final decision rests with the Minister of Conservation.

[19] Rights implied and enforced by 'taking into account' the principles of the Treaty of Waitangi.

The CRC, acting in a quasi-judicial role as consent authority are an integral part of the consent process, whereby enforcing communication between each of the parties. BPDC are promoting the sewage operations as the most practical of many options considered in the AEEs. They are, however receiving guidance and initiatives from CRC to undertake further information gathering. Te Runanga o Rapaki, while experiencing dissatisfaction with the proposed quality of water in Whakaraupo, are using the consent application to voice their rights in the overall management of Whakaraupo. They explicitly connect sewage discharge to the adverse impacts on their cultural practices of gathering kaimoana, thus wish to express their rights to participate in the setting of the water quality for Whakaraupo.

CRC, upon receiving BPDC's application contacted (before notification) te Runanga o Rapaki (pers comm. Tai, 1998), providing Rapaki with an opportunity to express their interest to participating in consent process. The Iwi Liaison Officer, acting as a contact for te runanga, can convey their concerns or issues to CRC, while the Investigating Officer (IO) also uses the officer to clarify issues (pers comm. Loe, 1998). The Iwi Liaison Officer often acts as a liaison between individual te runanga (pers comm. Couch, 1998).

BPDC AEEs indicated communication problems between BPDC and Rapaki, but CRC did not request additional information to address this issue (pers comm. Loe, 1998). Te Runanga o Rapaki made their concerns explicit by using the public submission process (pers comm. Loe, 1998). If tangata whenua are treated as submitters in the consent process, the consent authority (acting in quasi-judicial role) has no legal jurisdiction to treat tangata whenua as treaty partners. Te Runanga o Rapaki responsibilities and rights as hapū authority under Section 8 (RMA) were therefore, not represented in the consent process.

The public submission process does not give CRC an opportunity to gain appropriate agreement between parties, in order to fulfil its responsibilities under the Treaty of Waitangi (pers comm. Loe, 1998). A pre-hearing meeting was arranged, yet it was not used to address issues raised in the submission process it was used to reaffirm each party's position. BPDC position is to discharge sewage using the current operations. Rapaki was emphatic of their concerns regarding sewage discharge in Whakaraupo.

BPDC made no reference to any actions resulting from concerns raised during the hui (February 1998), nor did they address the queries raised by Te Runanga o Rapaki.

This could have been for a variety of reasons, possibility because of underlying barriers to communication. Te Runanga o Rapaki, while actively promoting their interests in the area, are continually receiving little or no recognition of their rights as tangata whenua (pers comm. Couch, 1998). They continue to see a deterioration of water quality at Whakaraupo, and sewage is a causing factor. They appear to expect more support from the BPDC than they have received, either in recognition of their legislative rights in the RMA, or through cooperation to improve the quality of water in Whakaraupo. Additionally, they are looking to more than the consent process to guarantee kaitiakitanga, such as the proposed Regional Coastal Plan to advocate a shellfish gathering water quality for Whakaraupo. If they do not receive active recognition of their concerns in Regional policy, they may define their rights by testing the Crown's obligations under the Treaty of Waitangi, via the Minister of Conservation.

BPDC have a variety of issues pertaining to responsibilities as a local authority, such as a limited funding base to cope with continued sewage issues. Sewage treatment is a necessary activity, for which BPDC are responsible. CRC could not resolve the issues raised during the pre-hearing. They concluded requested additional information from BPDC and concluded the meeting.

Issues regarding recognition of indigenous rights in BPDC AEEs include:

- Not enough early interaction during pre-application contact.
- Too much uncertainty in the outcome of pre-application contact.
- Lack of appreciation of different environmental perceptions and/or values.
- Focus on rights and/or positions within the consent not on achieving better environmental outcomes.

5.5 Summary of Key Issues

From the above analysis a number of key issues have been identified, and are discussed below.

Key Issue: Uncertainty during pre-application contact

The different statutory responsibilities of the applicant (in consulting with tangata whenua) and tangata whenua (with rights under the Treaty), however, creates uncertainties during pre-application contact. The consent authority's role is vital in recognising rights of tangata whenua in the AEEs. While the Fourth Schedule (clause 1(h)) and Section 92 Additional Information are used by the consent authority to encourage contact between tangata whenua and the applicant, the consent authority has no mandate or guidelines for advocating pre-application contact, nor how the applicant could recognise indigenous rights in AEEs. Formal recognition of tangata whenua concerns (in the consent process of the RMA) is as a public submitter under Section 96 Public Notification. Tangata whenua rights under the Treaty of Waitangi are not recognised in the consent process if their status is as public submitter, nor are they financially supported for their submission.

Key Issue: Consistent Recognition of Rights in the Policy and Plan Design and Implementation (Consent Process)

Tangata whenua rights are not necessarily represented in the AEEs or the consent process, as the AEEs is prepared by the applicant, and the consent authority's quasi-judicial function gives equal weighting to all parties. The statutory responsibility of the local authority to consult with tangata whenua during design of policies and plans is not explicitly linked to the rights of tangata whenua to influence (or participate) in the preparation of an AEEs. If Regional plans or policies are not consistent with the concerns raised by tangata whenua, then, as the case study indicates, tangata whenua concerns will not be addressed in the AEEs.

Key issue: Better Environmental Outcomes in the Proposed CRC Coastal Plan

How the local or regional authority is made accountable for meeting their responsibilities under the RMA is vital in ensuring the tangata whenua rights are consistently addressed in plans and subsequent resource consents. The proposed CRC Coastal Plan does not support Rapaki's acceptable water quality for gathering kaimoana. The Governors Bay sewage discharge is one of the many pollutants deteriorating the quality of the water at Whakaraupo, and is an integral part of Rapaki's efforts to restore kaitiakitanga. Te Runanga o Rapaki is using BPDC consent application to voice their rights as kaitiaki in the overall management of Whakaraupo, whereby they are interacting not only with BPDC (responsible for managing the operations of the sewage plant). They are also voicing their rights under the Treaty of Waitangi to the Minister of Conservation, with jurisdictions as a Crown Authority.

Key Issue: Effects based regime of RMA relies on measuring and controlling activities with direct effects on the environment.

Te Runanga o Rapaki feel that the overall responsibilities for improving the mauri of Whakaraupo is one for all parties to uptake (pers comm. Mr Couch, 1998). CRC has limited jurisdiction for controlling direct discharges to water, and at present they propose **'contact recreation'** water standard, rather than a kaimoana gathering standard. Improving the mauri of Whakaraupo requires consideration of the concurrent impacts of other pollutants, whereby other parties, e.g., land owners, BPDC, Minister of Conservation, Lyttelton Port Company and residents of Whakaraupo are responsible for their effects on Whakaraupo. BPDC is setting up a Harbour Working Group to consider water quality and activities on the harbour (pers comm. Porter, 1998), which is an opportunity to bring interested parties together. As the limited jurisdiction of CRC in managing effects does not permit them to attach responsibilities to all parties, a Harbour Working Group may contribute to overall management of Whakaraupo.

Furthermore, the degree to which the cultural and spiritual values of tangata whenua are weighted in the decision process is dependent on the ability of the environmental regime (of the RMA) to recognise them. The effects based approach of the RMA is driven from an ability to measure and monitor environmental outcomes. Yet, Māori cultural and spiritual values often held by elders, are spoken through wisdom, experiences, tikanga, mana and a connection to a place or taonga. If 'environmental and resource management' practices continue to rely on measurable results to make decisions, we are relying on the models of those measurements to tell the story. Stories are also representative of a diversity of cultural and spiritual values embodied in an elaborate web of intrinsic values that cannot be monitored using biophysical indicators. Tangata whenua rights under the Treaty of Waitangi enable them to uphold these values as representative of having particular regard to kaitiakitanga, and as a protocol for achieving better environmental outcomes. In order to address these issues, options are set out, together with advantages and disadvantages, in the following chapter.

6 Options

In order to address issues raised in Chapter 5 a number of options have been identified and discussed according to their advantages and disadvantages, with respect to improving the recognition of indigenous rights in AEEs.

6.1 Maintenance of the status quo

The RMA (1991) has allowed tangata whenua, the applicant and local and regional authorities to establish, incrementally, a practical understanding of its legislative framework. This includes development of various policies and plans with respect to achieving the purpose of the RMA, and also development of appropriate working relationships. These working relationships are continually evolving as the process and outcomes of the RMA are implemented. For example, the case study suggests that each party is aware of their respective positions and appears to be using the consent process to resolve identified issues. The consent process that has unfolded may help to promote te Runanga o Rapaki's rights in improving the quality of water at Whakaraupo. Disadvantages, however include a costly and timely application process, that potentially creates further futility for tangata whenua. The case study suggests that the applicant and tangata whenua are willing to test their positions in the consent process, which could end in the law courts, a costly and unamicable process.

6.2 Instigation of initiatives to encourage pre-application contact

Pre-application contact provides opportunity to create meaningful contact between the applicant and tangata whenua, thus encouraging a shared understanding of the potential issues. The willingness of both parties to communicate will improve the consent process, and allow identification of better environmental outcomes. Similarly, the unwillingness of the applicant to either contact tangata whenua or integrate their concerns in the AEEs can have a polarisation effect. As a result, each party entrenches themselves in their respective position. Furthermore, tangata whenua and the applicant have different statutory positions during the preparation of an AEEs, creating

uncertainty of the anticipated outcomes of communication. The following specific options have been identified:

6.2.1 Assign statutory responsibility to applicant to 'take into account the principles of the Treaty of Waitangi'

While this option will force the applicant to communicate with tangata whenua and recognise their concerns in the AEEs, it may create conflict between the applicant and tangata whenua, as the applicant is forced to communicate (via law), rather than act on their willingness. If the Crown assigned responsibility to the applicant it could raise constitutional conflict. The principles of the Treaty of Waitangi represent a partnership agreement between the Crown and tangata whenua, thus the Crown is accountable for ensuring tangata whenua rights are recognised in the RMA legislative framework, not the applicant. There are, however advantages of this option, including effective and efficient use of pre-application contact to promote recognition of indigenous rights in AEEs, i.e., efficient in terms of assigning responsibility to the applicant as they prepare the AEEs, and effective as they are made accountable for their responsibilities.

6.2.2 Special recognition of Tangata Whenua in the Fourth Schedule

The Fourth Schedule would read as follows: 'the applicant shall identify hapū or iwi authorities interested in or affected by the proposal, the consultation undertaken, and any response to the views of those consulted'.

The applicant does not have a mandatory responsibility to consult with tangata whenua, but under this option they are encouraged to do so. Similarly, tangata whenua are encouraged to undertake initiatives in response to their status in the Fourth Schedule, such as establishing a communication protocol and organisational arrangements. Regional and local authorities may, however, use this option to overburden the responsibilities of the applicant in the preparation of the AEEs, by encouraging the applicant to undertake consultation without appropriate guidance or established protocol for communication. Additionally, tangata whenua may not have the resource base, i.e., funding, and skills to meet their responsibilities. Therefore appropriate guidance and resourcing will need to be provided.

6.2.3 Establish protocol for anticipated outcomes from pre-application contact

Under the current legislative framework the applicant has to consider the concerns of affected parties. While consultation may be effective in identifying issues, there is little incentive for the applicant to giving meaning to them in the AEEs. Uncertainty of the outcome of consultation could be clarified through use of a protocol. The position and responsibilities of each party, including the consent authority, could be formally stated. The risk, however, of setting protocol for the recognition of indigenous rights in AEEs, is that it become a minimisation exercise. Additionally, developing a protocol is expensive and time consuming. Who prepares them and who funds them is an issue, as is achieving the desired outcome. The aim of a protocol is to encourage working relationships that promote better environmental outcomes. The following areas must be addressed:

1. Benefits of pre-application contact.
2. Positions of respective parties in terms of their rights and obligations during pre-application contact.
3. How to determine who to contact.
4. Protocol for communication with tangata whenua, including expected remuneration and respect for cultural sensitivity.
5. Guidelines for recognising issues or concerns raised by tangata whenua in the AEEs.

6.2.4 Use pre-hearing meetings before an AEEs is prepared by the applicant

Pre-hearing meetings are used to clarify, mediate, or facilitate resolution of issues raised during the consent process. If pre-application contact indicates potential communication problems (between tangata whenua and the applicant), use of a mediator would help clarify issues and/or address conflicts. The advantage of this option is early identification of issues, before the applicant commits resources, (staff, research, time and money) to the application. The applicant is well informed, and the mediator can determine if further meetings are required. This option, however, is mediator can determine if further meetings are required. This option is costly in terms of use and availability of mediators. Additionally, funding needs to be addressed as

this option may benefit all parties, and often the benefit of this option is realised in hindsight.

6.3 Instigation of initiatives to agree on application of the principles of the Treaty of Waitangi under the RMA

As the applicant has no mandatory responsibility to recognise indigenous rights in AEEs, responsibilities of regional and local authorities play a vital role in recognising indigenous rights. Options for the interpretation and implementation of the principles of the Treaty of Waitangi, within the infrastructure of the RMA, are discussed below.

6.3.1 Establish a Memorandum for Implementation of the principles of the Treaty of Waitangi

A Memorandum for implementation of the principles of the Treaty of Waitangi is an agreement between tangata whenua and the regional authority on the implementation of the Treaty principles in preparation of the policies and plans. The memorandum aims to implement the principles in the preparation and application of regional policy statements and iwi management plans. Its objective is to foster interaction between Crown and Tangata Whenua representatives based on the memorandum. The memorandum is developed at localised level by regional authorities and hapū and iwi authorities (located in the area). Characteristics would include:

1. Acknowelgement and implementation of agreed principles, particularly in terms of honouring the partnership relationship promoted under the Treaty of Waitangi.
2. Implementing Section 6(e) and 7(a) in:
    - preparing policies and plans,
    - setting environmental standards
    - establishing conditions of resource consents
3. Accountability of regional authorities to 'act upon' their responsibilities under Section 6(e), 7(a) and 8.
4. Recognition and integration of iwi or hapū management plans into regional policies and plans.

5. Protocol for anticipated outcomes of pre-application contact and te runanga participation in consent authority's assessment process (as discussed in Option 6.2.3).

The advantage of this option is that it aims to develop a partnership between tangata whenua and the regional authority to achieve the purpose of the RMA. This option does not require changes to the RMA rather it requires a proactive initiative to agree on the implementation of the principles. Another advantage is that it allows both parties to agree on development of policy frameworks. Disadvantages of this option include time and commitment required by both parties to set the memorandum up, which may prove a costly exercise. Additionally, sources of funding are an issue, as are the various interpretations of the principles at a national level. Furthermore, the RMA may need a stronger interpretation of the principles.

6.4 Give Effect to the Principles of the Treaty of Waitangi

Regional and local authorities' must 'take into account the principles of the Treaty of Waitangi' (under Section 8) in achieving the purpose of the RMA. They are not accountable for upholding the intentions of the Treaty of Waitangi, signed between the Crown and tangata whenua. Instead the principles are used to put the Treaty's intention into practise. To give effect to the principles would require a change in the interpretation section of the RMA. 'To give effect' would:

1. make regional and local authorities more accountable to 'act upon' their statutory responsibility to consult with tangata whenua in preparing policy and plans;
2. ensure policy and plans are representative of tangata whenua values in the overall management of the environment, thus promoting indigenous rights in AEEs;
3. require clearer interpretation and implementation to represent the intentions of the Treaty of Waitangi;
4. address issues raised by the Reference Group. The Reference Group removes the ability of the consent authority to request for additional information regarding consultation with affected parties. Public notification is promoted to identify concerns. Public notification does not represent rights of tangata whenua under principles of the Treaty of Waitangi. Therefore, the consent authority, in giving

effect to the principles will be required to formally include tangata whenua in the consent process.

6.5 Investigate current options in the RMA framework

Within the RMA there are a number of options to promote the recognition of indigenous rights in environmental policy design and implementation.

6.5.1 Iwi or Hapū Management Plan

Development of an iwi management may either at a iwi or hapū level, will promote tangata whenua environmental and cultural parameters, such as protocol for communication and expected environmental outcomes, and develop possible common ground for sustainably managing the natural environment. An advantage of this option is an interdependent policy framework allowing tangata whenua to design their own environmental policy and protocol. An issue (perceived as a possible disadvantage) is the degree to which these plans will influence environmental decision outcomes. Regional and local authorities may, however, lack clarity on how iwi management plans will in integrated into the RMA regime. Furthermore, resourcing such as financing and training may limit the ability of tangata whenua to draft their plans. Iwi or hapū management plans, a positive and realistic option for representation of tangata whenua in environmental policy. Areas include:

1. The iwi or hapū's implementation of Section 6 (e), 7, 8 of the RMA (as discussed in Option 6.3.1.)
2. Integration of other legislative framework, such as the Conservation Act.
3. Identification of environmental values and programs of the iwi or hapū, including cultural, economic, social and spiritual values placed on the environment, particularly in terms of promoting better environmental outcomes.
4. Jurisdictions or boundaries for environmental management at hapū or iwi level.
5. Environmental programs for improving the mauri of the natural environment.

6.5.2 Transfer of Power

Additional provisions in the RMA include Section 33 'transfer of power' and Section 34 'a role for tangata whenua in granting consents. Both of these provisions require further research as to the application and feasibility of them for tangata whenua.

Additionally, both provisions need to be considered either at a regional level, or hapū specific.

6.6 Preparation of a National Policy Statement

A National Policy Statement (NPS) would provide guidance, assign accountability and promote consistency in terms of the implementing of Section 6, 7 and 8 in the RMA (PC, 1998:122):

- 'take into account the principles of the Treaty of Waitangi' (Section 8).
- 'have particular regard to kaitiakitanga' (Section 7(a)).
- 'recognise and provide for, as a matter of national importance, the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga (Section 6(e)).

A NPS could set out policy and/or guidelines for the role and responsibility of tangata whenua in the Resource consent process, including how they would be involved. NPS could be also be used as a basis for establishing protocol between tangata whenua and regional and local authorities. A possible disadvantage of NPS is that, to date they have not been used as part of the RMA regime. There may either be problems in defining the purpose of NPS and/or developing NPS to achieve their intention. Advantages, however include National policy direction for implementation of the tangata whenua rights under RMA.

6.7 Summary

All of the options discussed above will help to promote the recognition of indigenous rights in AEEs. From these options a number of recommendations are made in the following chapter.

7 Conclusions and Recommendations

7.1 Conclusion

AEEs can be used to encourage cooperation between the applicant and tangata whenua, by establishing pre-application contact. Cooperation often indicates better success in addressing concerns than using the formalised resource consent process (per comm. Mr Loe, 1998). Pre-application contact is an opportunity for interest groups to identify and address environmental issues, whereby interaction requires a combination of careful and cooperative communication, with the aim of identifying better environmental outcomes.

As the applicant prepares the AEEs, pre-application is important in promoting recognition of indigenous rights in AEEs. An applicant's unwillingness to address tangata whenua concerns is detrimental to the success of pre-application contact. Tangata whenua do not expect to comment on issues during pre-application contact, only to find they are not recognised in the AEEs. They are not merely an 'affected party' they are tangata whenua, therefore they interact with the applicant as such. The applicant must be willing to respond accordingly. Otherwise, an applicant's unwillingness will probably (but not necessarily) be met with equal resistance by tangata whenua.

The different statutory responsibilities of the applicant (in consulting with tangata whenua) and tangata whenua (with rights under the Treaty), however, creates uncertainties during pre-application contact. The consent authority's role is, therefore, vital in recognising rights of tangata whenua in the AEEs, including removal of uncertainty by promoting interactive communication between each party.

Regional authorities have a statutory responsibility to 'take into account the principles of the Treaty' in achieving the purpose of the RMA. AEEs, and the resource consent process, are used by the authority to manage the effects that activities have on the environment. How these effects are substantiated, i.e, the criteria used to set accepted

effects will influence the AEEs. Environmental standards are set out in regional plans and are monitored according to perceived effects. If regional plans or policies are not consistent with the concerns raised by tangata whenua, then, as the case study indicates, tangata whenua concerns will not be addressed in the AEEs.

Initiatives to promote recognition of indigenous rights in AEEs are required by regional and local authorities to fulfil provisions of Section 12.15 of the Ngāi Tahu Deed of Settlement. In order to promote recognition of indigenous rights in AEEs, tangata whenua and regional authorities must agree on how the perceived effects on the environment are substantiated. Regional authorities' substantiation of perceived effects from activities on the environment must 'have particular regard to kaitiakitanga', thus integrating sociocultural and spiritual values with biophysical effects. An agreement on consistent application of the principles of the Treaty will help both parties set criteria to substantiated environmental effects.

Tangata whenua futility feeling from lack of recognition in decision making has had an adverse effect on promoting better environmental outcomes. The Resource consent process does not focus on environmental outcomes. Each party uses it to test their rights and integrity to influencing the outcome. Firstly, this is a costly and time consuming process, secondly tangata whenua environmental values are overlooked in favour of standards that are achievable within 'effects based' environmental management. Not only must an applicant be willing to work with tangata whenua, so to must regional authorities. If tangata whenua futility continues, they will continue to test regional authorities in the law courts, furthering the focus on positional rights rather environmental outcomes

All parties, therefore (the applicant, tangata whenua and regional authorities) have a responsibility to understand the implementation of the principles of the Treaty. A stronger interpretation of the principles (to give effect) will assign accountability to regional authorities, and also demand guidance at a national level. Similarly, tangata whenua have an opportunity to develop iwi or hapū management plans, helping clarify anticipated environmental outcomes. Finally, all New Zealanders have an ethical and moral responsibility to respect cultural integrity as promoted within the intentions of the Treaty of Waitangi.

7.2 Recommendations

The recommendations set out below are a combination of the options identified in Chapter 6. They focus on promoting the recognition of indigenous rights in AEEs, by assigning roles to tangata whenua, regional authority, the applicant, and Minister for the Environment. They are comprehensive in terms of implementation requirements. They require a commitment from all parties to participate, to source funding, and to appreciate the best intentions of other participants. My recommendations aim to:

- promote pre-application contact and reduce uncertainty between the applicant and tangata whenua,
- establish protocol for tangata whenua involvement the consent process,
- interpret and implement the Treaty principles when preparing polices and setting environmental standards,
- encourage iwi and hapū management plans,
- develop National guidance and support,
- undertake initiatives to fulfil Section 12.15 of the Ngāi Tahu Deed of Settlement (refer Appendix 6),
- assign responsibility, establish starting points and identify future areas requiring research.

7.2.1 Recommendations to be actioned in the short term

Canterbury Regional Council

4. Undertake a pilot programme for drafting a memorandum for implementation of the principles of the Treaty of Waitangi, as discussed in Option 6.3.1. This will include:

- seeking involvement from te runanga, such as Te Runanga o Rapaki,
- adhering to PCE's recommendation (1998:123) and establish grants and other assistance for the development of iwi and hapū resource management plans, in support of Option 6.5.1.

Te Runanga o Rapaki

3. Develop a Hapū Management Plan for Whakaraupo, that includes uptake of Option 6.5.1 plus:

- participating in a pilot programme for drafting a memorandum for implementation.

Banks Peninsula District Council

3. Continue with the implementation of the Harbour Working Party Group.
4. Adhere to PCE's recommendation (1998:123) and establish grants and other assistance for the development of iwi and hapū resource management plans, in support of Option 6.5.1.

7.2.2 Recommendations in response to proposed changes to the RMA

The following recommendations to the Minister of the Environment are in response to proposed changes to the RMA:

1. Recognise tangata whenua in the Fourth Schedule, Option 6.2.2.

   "The applicant shall identify tangata whenua affected by the proposal, the consultation undertaken, and any response to their views."

2. Change Section 8 of the RMA to

   "In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall give effect to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)."

7.2.3 Recommendation for National Policy Statement

Minister for the Environment heed the recommendation of the PCE (1998:122) and develop a National Policy Statement, as outlined in Option 6.6.

7.2.4 Further research framework

Immediate Research Required

Responsible Party: Minister of the Environment

Conduct and continue further research into the additional provisions of the RMA:

- transfer of power under Section 33,

- application of iwi and hapū management plans
- recognition into identification and representation of hapū or authority

Long-term Research Framework

Canterbury Regional Council

Monitor the effects that protocol for pre-application contact has on

- recognition of indigenous rights in AEEs, based on the criteria set out in Chapter 3.
- relationship between the applicant and tangata whenua and consent authority.
- environmental outcomes.

Academic Research

Conduct further research into how tangata whenua concerns can be represented in an AEEs, such as assessment of cultural effects.

Using the aims and objectives of this project, conduct further research on different scenarios, such as corporate, private or tangata whenua applicants, a combination of affected hapū and a variety of regional authorities.(refer study assumptions Chapter1.2).

Conduct further research into impacts from implementation of provisions under the Ngāi Tahu Deed of Settlement, such as implementation of Section 12.15 (see Appendix) and monitoring the effect these have on recognising indigenous rights in AEEs.

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Appendix 1 Correspondence and Interviews Questions

Stuart Waddel
PO Box 8990
Riccarton
Ph. 326 5385

Te Runaka o Rapaki
PO Box 100
Lyttelton
Attention: Bill Gillies

30 July 1998

Kia ora Bill

Re: Indigenous Rights and Assessment of Environmental Effects.

My name is Stuart Waddel. I am in my second year of a Master of Science in Resource Management at Lincoln University. As discussed with you on the phone, I have included a copy of a project I completed earlier this year. I would like to thank Don Couch for his valuable contributions. Upon his return to Aotearoa, New Zealand, would you please pass the project onto him. Furthermore, I am continuing my research (as outlined below), and would like to invite Te Runaka o Rapaki to participate. I am completing a research project on indigenous rights and Assessment of Environmental Effects (AEE) under the Resource Management Act (RMA) 1991. While your participation is voluntary, I welcome your involvement as an integral part for better promoting indigenous rights in AEE. Your contributions will be held in confidence, and any inclusion of such contributions in my report will be subject to final approval.

My project is titled Restoring Kaitiakitaka: Evaluating the recognition of Indigenous Rights in Assessment of Environmental Effects. My project aims include:

- the critical evaluation of relevant literature,
- to carry out a detailed case study involving a survey of participants in the AEE process,
- developing criteria that will be useful for interested parties (Te Runaka, applicant and consent authority) to better promote and/or safeguard indigenous rights,
- developing a research framework for improved integration of indigenous rights in AEE and resource management decision making.

As part of achieving these aims, I propose to complete an evaluative case study involving Te Runaka o Rapaki and the Banks Peninsula District Council's application for resource consent to discharge sewerage into Whakaraupo. I will be talking with Te Runaka o Rapaki (as principal affected party), the Banks Peninsula District Council (as applicant) and the Canterbury Regional Council (as consent authority). My initial time line for

completion of a draft report is 14 September, and 30 October for a final report. I have attached some draft and indicative questions for your interest. Prior to meeting with you, I will send a complete set of questions. I anticipate the meeting will take no longer than 2 hours, and located at a place suitable for you. I would like to meet with you on Thursday 13 August at 9.00am. As gesture of reciprocation, you will receive a copy of my full report (or a research summary if you so choose) after 2 November. I will call you to confirm, shortly after you receive this letter.

Kia kaha

Stuart R. Waddel

Indicative Questions for te Runaka o Rapaki

Restoring Kaitiakitaka

Under Section 7 of the RMA, those exercising functions, duties and powers under the Act Council shall have particular regard to kaitiakitaka. The RMA defines kaitiakitaka as the exercise of guardianship by takata whenua of an area in accordance with tikaka Maori in relation to natural and physical resources; and includes the ethic of stewardship

- How are you restoring kaitiakitaka at Whakaraupo?

- With specific reference to the proposal to discharge sewerage into Whakaraupo, how does this influence your efforts to restore kaitiakitaka at Whakaraupo?

Assessment of Environmental Effects

Under Section 88 (4) (b) of the RMA 1991, the BPDC's application 'shall include an assessment of any actual or potential effects that the activity (sewerage discharge) may have on the environment, and the ways in which any adverse effects may be mitigated'. Furthermore, the BPDC assessment 'shall be prepared in accordance with the Fourth Schedule'.

The Fourth Schedule also states an AEE 'should identify those persons interested in or affected by the proposal, the consultation undertaken, and any response to the views of those consulted'.

- How was communication performed between Rapaki and BPDC prior to completion of the AEE? Was this communication satisfactory as tikaka Maori?

- Did the AEE recognise your concerns of the proposal, both in terms of your communication with BPDC and restoring Kaitiakitaka?

For example an AEE may require:

- contact between applicant and Te Runaka at pre-application period,
- consideration of alternatives and a diversity of views,
- recognition of the decision making process in the AEE and subsequent resource consent process.

Responsibilities of CRC under the Treaty of Waitaki

Under Section 8 of the RMA, the Council 'in relation to managing the use, development and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitaki'.

Furthermore, Section 6 of the RMA, the Council, in achieving the purpose of sustainable management, 'shall recognise and provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga'.

- Is the Council proactive toward meeting their responsibilities under the RMA? If so how are they doing this?

- What role does the Council's Iwi Liaison Officer perform with regard to recognition of your efforts to restore kaitiakitaka at Whakaraupo?

- Are you familiar with how the council is made accountable for meeting the Crown's obligations and responsibilities to honour the Treaty of Waitaki?

Interrelationship and communication with the Council

- Is the Council familiar with your concerns/issues for restoring kaitiakitaka at Whakaraupo? If so, how are they showing particular regard to kaitiakitaka within the resource consent process?

- Do you have an agreed protocol for effective communication, whereby all parties (in this case Rapaki, BPDC and CRC) can express and acknowledge different perceptions for creating effective communication?

- With respect to tikaka, how can effective communication be achieved?

Interdependent Policy Framework

Under Section 62 (1), a regional policy statement shall state matters of resource management significance to iwi authorities. Furthermore, Section 66, the Council, shall have regard to relevant planning documents recognised by an iwi authority affected by the regional plan.

Have you established a common ground, or an agreement with the Council and/or BPDC, in respect to areas of contention for managing the environment within Rapaki's rohe, such as the diversity of environmental values? If so how? If not, would an iwi management plan help achieve this?

Stuart Waddel
PO Box 8990
Riccarton
Ph. 326 5385

Banks Peninsula District Council
P.O Box 4
Lyttleton
Attention: John Porter
31 July 1998

Kia ora John

Re: Indigenous Rights and Assessment of Environmental Effects.

My name is Stuart Waddel. I am in my second year of a Master of Science in Resource Management at Lincoln University. As part of my studies I am completing a research project on indigenous rights and Assessment of Environmental Effects (AEE) under the Resource Management Act (RMA) 1991. I would like to invite you to participate. While your participation is voluntary, I welcome your involvement as an integral part of better promoting indigenous rights in AEE. Your contributions will be held in confidence, and any inclusion of such contributions in my report will be subject to final approval.

My project is titled Restoring Kaitiakitaka: Evaluating the Recognition of Indigenous Rights in Assessment of Environmental Effects. My project aims include:

- the critical evaluation of relevant literature,
- to carry out a detailed case study involving a survey of participants in an AEE process,
- developing criteria that will be useful for interested parties (Te Runaka, applicant and consent authority) to better promote and/or safeguard indigenous rights,
- developing a research framework for improved integration of indigenous rights in AEE and resource management decision making.

As part of achieving these aims, I propose to complete an evaluative case study involving Te Runaka o Rapaki and the Banks Peninsula District Council's application for resource consent to discharge treated sewerage into Whakaraupo. I will be talking with Te Runaka o Rapaki (as principal affected party), the Banks Peninsula District Council (as applicant) and the Canterbury Regional Council (as consent authority). My initial time line for completion of a draft report is 14 September, and 30 October for a final report. I have attached some draft and indicative questions for your interest. Prior to meeting with you, I will send a complete set of questions. I anticipate the meeting will take no longer than 2 hours, and will be located at your officers. I would like to meet with you on Tuesday 18 August at 9.00am. As gesture of reciprocation, you will receive a copy of my full report (or a research summary if you so choose) after 2 November. I will call you to confirm, shortly after you receive this letter.

Kia kaha

Stuart R. Waddel

Indicative Questions for Banks Peninsula District Council

Under Section 88 (4) (b) of the RMA 1991, an application for a resource consent 'shall include an assessment of any actual or potential effects that the activity (sewerage discharge) may have on the environment, and the ways in which any adverse effects may be mitigated'. Under Section 88 (6) an assessment 'shall be in such detail as corresponds with the scale and significance of the actual or potential effects that the activity may have on the environment', and 'shall be prepared in accordance with the Fourth Schedule'.

Furthermore, the Fourth Schedule states an Assessment of Environmental Effects 'should identify those persons interested in or affected by the proposed discharge, the consultation undertaken, and any response to their views'.

In light of the above, the following questions may apply:

- Are you familiar with Te Runaka o Rapaki's concerns/issues for restoring Kaitiakitaka? For example, the ecological concerns of polluting Whakaraupo, particularly in regard to the mataitai reserve application at Rapaki Bay.

- With respect to the Assessment of Environmental Effects for sewerage discharge into Whakaraupo, at what stage of completing the AEE did you contact and/or consult with Rapaki? What consultation was undertaken?

- As part of the consultation process did you establish an agreed protocol for effective communication, whereby all parties were aware of the different perceptions of effective communication?

- In the AEE process were you able to establish a common ground, or agreement with Rapaki, in respect to areas of contention about management of natural resources in Rapaki's rohe.

- How did you seek Canterbury Regional Council's guidance on consulting with, or consideration of, Rapaki?

Stuart Waddel
PO Box 8990
Riccarton
Ph. 326 5385

Canterbury Regional Council
PO Box 345
Christchurch
Attention: Bob Tai

31 July 1998

Kia ora Bob,

Re: Indigenous Rights and Assessment of Environmental Effects.

My name is Stuart Waddel. I am in my second year of a Master of Science in Resource Management at Lincoln University. As part of my studies I am completing a research project on indigenous rights and Assessment of Environmental Effects (AEE). I would like to invite you to participate in my project. While your participation is voluntary, I would welcome your involvement as an integral part of better promoting indigenous rights in AEE. Your contributions will be held in confidence, and any inclusion of such contributions in my report will be subject to final approval.

My project is titled Restoring Kaitiakitaka: Evaluating the Recognition of Indigenous Rights in Assessment of Environmental Effects. My project aims include:

- a critical evaluation of relevant literature,
- to carry out a detailed case study involving a survey of participants in an AEE process,
- developing criteria that will be useful for interested parties (Te Runaka, applicant and consent authority) to better promote and/or safeguard indigenous rights,
- developing a research framework for improved integration of indigenous rights in AEEs and resource management decision making.

As part of achieving these aims, I propose to complete an evaluative case study involving Te Runaka o Rapaki and the Banks Peninsula District Council's application for resource consent to discharge treated sewerage into Whakaraupo. I will be talking with Te Runaka o Rapaki (as principal affected party), the Banks Peninsula District Council (as applicant) and the Canterbury Regional Council (as consent authority). My initial time line for completion of a draft report is 14 September, and 30 October for a final report. I have attached some draft and indicative questions for your interest. Prior to meeting with you, I will send out a complete set of questions. I anticipate the meeting will take no longer than 2 hours and be located at your officers. I would also like to speak with the Investigating Officer responsible for the resource consent (who I am currently in the

process of contacting), thus it may be beneficial to organise a joint meeting. I would like to meet with you on Monday 17 August at 9.00am. As gesture of reciprocation, you will receive a copy of my report (or a research summary if you so choose) after 2 November 1998. I will call you to confirm, shortly after you receive this letter.

Kia kaha

Stuart R. Waddel

Stuart Waddel
PO Box 8990
Riccarton
Ph. 326 5385

12 August 1998

Loe Pearce & Associates Ltd
182 Main North Rd
Christchurch
Attention: Barry Loe

Kia ora Barry,

Re: Indigenous Rights and Assessment of Environmental Effects.

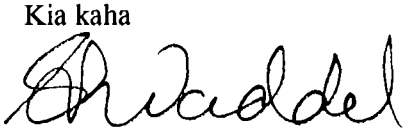
My name is Stuart Waddel. I am in my second year of a Master of Science in Resource Management at Lincoln University. As part of my studies I am completing a research project on indigenous rights and Assessment of Environmental Effects (AEE). I would like to invite you to participate in my project. While your participation is voluntary, I would welcome your involvement as an integral part of better promoting indigenous rights in AEE. Your contributions will be held in confidence, and any inclusion of such contributions in my report will be subject to final approval.

My project is titled Restoring Kaitiakitaka: Evaluating the Recognition of Indigenous Rights in Assessment of Environmental Effects. My project aims include:

- a critical evaluation of relevant literature,
- to carry out a detailed case study involving a survey of participants in an AEE process,
- developing criteria that will be useful for interested parties (Te Runaka, applicant and consent authority) to better promote and/or safeguard indigenous rights,
- developing a research framework for improved integration of indigenous rights in AEEs and resource management decision making.

As part of achieving these aims, I propose to complete an evaluative case study involving Te Runaka o Rapaki and the Banks Peninsula District Council's application for resource consent to discharge treated sewerage into Whakaraupo. I will be talking with Te Runaka o Rapaki (as principal affected party), the Banks Peninsula District Council (as applicant) and the Canterbury Regional Council (as consent authority). My initial time line for completion of a draft report is 14 September, and 30 October for a final report. I have attached some draft and indicative questions for your interest. Prior to meeting with you, I will send out a complete set of questions. I anticipate the meeting will take no longer than 1.5 hours and be located at your officers. I would like to meet with you on Tuesday 18 or Thursday 20 August at 9.00am. As gesture of reciprocation, you will receive a copy of my report (or a research summary if you so choose) after 2 November 1998. I will call you to confirm, shortly after you receive this letter.

Kia kaha



Stuart R. Waddel

Indicative Questions for Barry Loe (Investigating Officer)

Responsibilities of Canterbury Regional Council under the Treaty of Waitaki

Under Section 8 of the RMA 1991, the Council, 'in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitaki'.

- Do you receive guidance for acting consistently when 'taking into account the Principles of the Treaty of Waitaki?'

- Do you liaise with the Iwi Liaison Officer? What issues do you face for including tangata whenua rights i.e., Rapaki Runaka, in the AEE?

- How are you (as investigating officer) made accountable for meeting the Crown's obligations and responsibilities to honour the Treaty of Waitaki?

Interrelationship and Communication with Rapaki

More specifically, under Section 7 of the RMA, the Council, acting as consent authority 'shall have particular regard to kaitiakitaka'.

- Are you familiar with Rapaki's concerns/issues for restoring kaitiakitaka? For example, the ecological concerns of polluting Whakaraupo. If so, how are you showing particular regard to kaitiakitaka?

- Do you have an agreed protocol for effective communication, whereby all parties (in this case Rapaki, BPDC, and CRC) can express and acknowledge different perceptions for creating effective communication?

Interdependent Policy Framework

Under Section 62 (1) a regional policy statement shall state matters of resource management significance to iwi authorities. Furthermore, under Section 66 the council shall have regard to relevant planning document recognised by an iwi authority affected by the regional plan.

- Have you (or will you) established common ground, or agreement with Rapaki, in respect to areas of contention for managing the environment within Rapaki's rohe? If so how? If not, would an iwi management plan better promote common ground?

Assessment of Environmental Effects

Under Section 88 (4)(b) an applicant for a resource consent must prepare 'an assessment of any actual or potential effects that their activity may have on the environment, and the ways in which any adverse effects may be mitigated'. Furthermore, the applicant under the Fourth Schedule should consider and /or consult with affected parties.

- Does an AEE provide an opportunity for Te Runaka to communicate their efforts and concerns for restoring kaitiakitaka?

For example an AEE may require:

- contact between applicant and Runaka at pre-application period
- consideration of alternatives
- support from the consent authority (CRC).

Appendix 2 Principles of the Treaty of Waitangi

Principles of the Treaty of Waitangi (Palmer 1989, in Stokes, 1992:189)

The Kawanatanga Principle:
recognises the right of the Government to govern and to make laws.

The Rangitiratanga Principle:
recognises the right of iwi (tribes) to organise as iwi and, under law, to control the resources they own.

The Principle of Equality:
recognises that all New Zealanders are equal before the law.

The Principle of Reasonable Co-operation:
Recognises that both government and iwi are obliged to accord each other reasonable cooperation on major issues of common concern.

The Principle of Redress:
Acknowledges that the Government is responsible for providing effective processes for the resolution of grievances in the expectation that reconciliation can occur.

Taking into Account the Principles of the Treaty of Waitangi under the Resource Management Act, 1991 (Crengle, 1993)

The Essential Bargain
The Court of Appeal: The cession by Māori of sovereignty to the Crown was in exchange by the Crown of Māori Rangatiratanga

Waitangi Tribunal: The right of the Crown to make laws was exchanged for the obligation to protect Māori interests.

Tribal Self Regulation
The Court of Appeal: Māori were to retain chieftainship Rangatiratanga over their resources and taonga and to have all the rights and privileges of citizenship.

Waitangi Tribunal: The Crown has an obligation to legally recognise tribal Rangatiratanga.

The Treaty Relationship
The Court of Appeal: The Treaty requires a partnership and the duty to act reasonably and in good faith. The responsibilities of the parties are analogous to fiduciary duties. The Treaty does not authorise unreasonable restrictions on the Crown's right to govern.

Waitangi Tribunal: The Treaty implies a partnership, exercised with utmost good faith. The Treaty is an agreement that can be adapted to meet new circumstances. The courtesy of early consultation is a partnership responsibility. The needs pf both Māori and the wider community must be met, which will require compromise on both sides.

Active Protection
The Court of Appeal: The duty in not merely passive, but extends to active protection of Māori people in the use of their resources and other guaranteed taonga to the fullest extent practicable.

Waitangi Tribunal: The Māori interest should be actively protected by the Crown. The Crown right of pre-emption imposed reciprocal duties to ensure that the tangata whenua retained sufficient for their needs. The Crown cannot evade its Treaty obligations by conferring inconsistent jurisdiction on others

Appendix 3 Whakaraupo Freshwater Bodies

TANGATA WHENUA VALUES ASSOCIATED WITH FRESHWATER BODIES
TE HAPU O NGATI WHEKE - RAPAKI

D29:tabrap. Updated: 19 May, 1998.

#	Location	Class	Tangata Whenua Values	Tangata Whenua Concerns	Water Quality Classi-ication	Desired Out-comes
	Whakaraupo					
1	Omaru - below Govs Bay Rd	low	cultural - marae	restoration of stream & banks	C	E
2	Mid-Omaru	low	mahinga kai, cultural	restoration wetlands	MNS,C	E
3	Omaru - above Govs Bay Rd	low	cultural year-round flow	restoration of spring source of flows	C	E
4	Korora Tahi	low	drainage, ngawha?	seasonal flow	MS	M
5	Taukahara	medium	cultural - wahie	seasonal flow	C	M
6	waipuna	low	several springs are key water sources for strms	restoration	NS, C	E
7	Ohinetahi	medium	drainage	restoration	NS	M
8	Te Rapu/ Gebbies Pass	medium	inaka spawning near Wheatsheaf	restoration	C	E
9	Waiake/ Teddington	medium	mahinga kai - tuna inaka spawning	riparian restoration	MNS	M
10	Te Wharau/ Charteris Bay	medium	waterfalls	seasonal flow	MNS	M
11	Purau	medium	inaka, drainage	seasonal flow	MNS	M
	Te Waihora		[Shared with Taumutu]			
12	Tau-awa-a-muka/ Halswell Riv.	high	mahinga kai - tuna	flood control 'cleaning' impact on tuna	C	E
	Kaituna		[Shared with Koukourarata]			
13	Kaituna: source to Reserve	high	mahinga kai	riparian development	C	M
14	Reserve to Hwy 75	medium	mahinga kai	riparian restoration	C	M
15	Hwy 75 to Te Waihora	medium	mahinga kai	riparian restoration	C	M
16	Okana	medium	mahinga kai	restoration	MNS	M
	Otautahi		*N Tuahuriri takiwa*			
17	Chch Artesian	high	domestic water source	no discharge infiltr'n	WS	M
	Wairewa		*Wairewa takiwa*			
18	Te Wairewa	low	mahinga kai -tuna	water quality	C	E

TANGATA WHENUA VALUES ASSOCIATED WITH FRESHWATER BODIES
TE HAPU O NGATI WHEKE - RAPAKI

Key to the 7 columns:

#	no. given a water stretch eg Omaru Stream - 3 "stretches'.[18 total]
Location	description of the specific water body
Class	'very high'(0); 'high'(3); 'medium'(9); 'low'(6); ? (0).
Important Tangata Whenua Values:	eg 'whitebait spawning'; 'fishing-eel'; 'fish passage & habitat'; 'native biodiversity'; 'bird habitat & passage'
Tangata whenua Concerns:	'low flows due to irrigation abstraction'; 'stock damage to riparian margin'; 'instream barriers to fish passage'.

Water Quality Classification F, FS, AE ... [see below]

WS	- water managed for water supply purposes
C	- water managed for cultural purposes
FS	- water managed for fish spawning purposes
F	- water managed for fishery purposes
SG	- water managed for the gathering or cultivation of shellfish for human consumption
AE	- water managed for aquatic ecosystem purposes
CR	- water managed for contact recreation purposes
NS	- water managed in its natural state
A	- water managed for aesthetic purposes
I	- water managed for irrigation purposes
IA	- water managed for industrial abstraction
MS	- water managed for a mixed standard
MNS	- water managed for a mixed natural standard

Desired Outcome:

M (11)	- (Maintain) means that the existing water quality is believed to match the classification and that therefore the present water quality only need to be maintained.
E (7)	- (Enhance) means that the existing water quality is believed to be lower than the classification and that therefore the present water quality needs to be enhanced.

RESTORATIVE PROGRAMMES

Option B3 a) recommends that in each Runanga's takiwa:

1. for smaller rivers, tributaries, streams, creeks and drains -
   5 year programmes should be established to detail and establish minimal stream flow-rates. Each Runanga to set a priority order of such streams. see below for a suggested list for Rapaki.

2. Similarly for waipuna/springs {Option B3 c)}
   Proposals would be developed for their protection and restoration to ensure minimal flows.

3. For habitat restoration purposes a 5 year program of riparian protection and restoration would identify one stream per year in each takiwa. {Option B3 e)}.

The ability of Runanga to develop such programmes is currently limited but as an indicator of how such a program could be planned the following examples are proposed for discussion purposes. [These examples are in what seems to be the 'best fit' on a yearly basis - they are not necessarily in order of priority].

Rapaki:

1. Small rivers, tributaries, streams, and creeks:

1998	Omaru	Restoration planning program in progress.
1999	Korora Tahi	The 'other' stream in Rapaki. Preliminary planning.
2000	Taukahara	Restoration of upper hillside vegetation?
2001	Waiake	Teddington - mahinga kai: inaka spawning & tuna
2002	Kaituna	Shared with Koukourarata. Joint proposal for program

Ongoing: Te Wairewa.
Working with other hapu/ Runanga for restoration of this major source of mahinga kai for all Waitaha Ngai Tahu iwi.

2. Waipuna/Springs: initially restoration of Omaru waipuna sources

3. Restoration
   See Table 1. above eg Omaru restoration as first priority - and in year 1.

Appendix 4 Consultation Letter

DISCHARGES FROM SEWAGE TREATMENT PLANTS INTO THE LYTTELTON HARBOUR
CONSULTATION WITH RAPAKI RUNANGA

ackground

ıe Banks Peninsula District Council operates three waste water treatment plants that discharge treated fluent to Lyttelton Harbour. These are located at Lyttelton, Governors Bay and Diamond Harbour.

ttelton The new treatment plant at Lyttelton commenced operation in August 1996. This facility has Coastal Permit to discharge secondary treated, ultra-violet disinfected waste water for a period of 35 years. t present the Lyttelton sewer reticulation network is being extended to include the settlement of Rapaki.

iamond Harbour The treatment plant at Diamond Harbour has a consent to discharge treated effluent ıtil 30 September 2003. With the continuing development at Diamond Harbour, and the probable extension sewer reticulation to most areas of Church Bay in the near future, it is probable that an upgrade of the eatment plant will be required within the current consent period.

overnors Bay The discharge consent for the treatment plant at Governors Bay has recently expired. his plant continues to produce a high quality effluent that should easily meet the conditions that are likely to pply to a new consent. The recent replacement of the UV disinfection unit in May 1997 at Governors Bay ıould see an end to variability of effluent test results for faecal coliforms that have been recorded in recent mes. The capacity of the existing plant has been assessed as being capable of serving future development in e existing Governors Bay drainage area, with only minor modifications required to the plant. The council tends to apply for a new discharge consent for a period of 35 years.

meeting was held with Upoko Runanga of Rapaki, Mr Bill Gillies and Council Projects Manager, Mr John orter on 29 July 1997 to discuss the matter of effluent discharges to the harbour.

iews expressed by Mr Gillies, as representative of Rapaki.

ır Gillies believes that septic tanks have not been successful at Rapaki, as has been found to be the case in ther areas of Lyttelton Harbour. Rapaki has chosen to be included in the area to be served by the treatment lant that is located at Lyttelton, despite the high costs that are associated with this work.

apaki endorses the approach that is being taken by the Regional Council in the granting of new consents, in ıe continued improvement of effluent quality standards, as technology and practicality permits. It is hoped ıat these improvements will contribute to an improvement in the quality of water in Lyttelton Harbour.

tatement

his document represents a fair interpretation of matters discussed at the meeting.

Mr Bill Gillies, Opuku Runanga Rapaki .....

Mr John Porter, Council Projects Manager .....

Dated: .....

APPENDIX 5 RESOURCE MANAGEMENT ACT (1991)

Part II Section 5 sets out the purpose of the Act as:
To promote the sustainable management of natural and physical resources.

Sustainable management is defined in the Act as:
managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety

'Environment' (RMA, 1991) includes:

- *Ecosystems and their constituent parts, including people and communities; and*
- *All natural and physical resources; and*
- *Amenity values; and*
- *The social, economic, aesthetic, and cultural conditions which affect the matters stated above or which are affected by those matters.*

Section 6 sets out matters of national importance for persons exercising functions and powers under the RMA, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for:

the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

Section 7 sets out eight 'matters' which must be regarded by those exercising functions, duties and powers under the Act. The first of which is Kaitiakitaka. The Resource Management Act defines Kaitiakitaka as:

the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Maori in relation to natural and physical resources; and includes the ethic of stewardship.

Section 8 of the Resource Management Act relates directly to the Treaty of Waitangi stating:

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

Section 12.15 Resource Management Act there are a number of provisions:

Section 12.15.2 Development of Feedback Process

The Crown agrees that it will, through the Ministry for the Environment and within the next financial year following the Settlement Date, develop a process, in consultation with Te Runanga, for Te Runanga to provide feedback to the Ministry of the environment on how Treaty of Waitangi obligations under the Resource Management Act 1991 are being addressed in the Ngai Tahu Claim Area.

Section 12.15.3 Monitoring Performance of Councils

The Crown agrees that staff of the Ministry for the Environment will meet with district and regional councils within the Ngai Tahu Area at least annually from the Settlement Date (unless otherwise agreed with Te Runanga) to monitor, in accordance with the Ministry's functions under section 24 of the Resource Management Act 1991, the performance of those councils in implementing the Treaty provisions in the Resource Management Act 1991.

Section 12.15.4 Ministry for the Environment Work Projects

The Crown agrees that it will, within 3 years from the Settlement Date and through the Ministry for the Environment:

- *complete a survey of local authorities in the Ngai Tahu Claim Area in consultation with Te Runanga (and, as appropriate, local authorities) to monitor how Iwi Management Plans are being dealt with in that area;*

- *pursue the development (in consultation the Te Runanga) of a set of indicators relating to water, air and land, within the framework of the National Environmental Indicators Programme, incorporating Maori values. The Crown will, through the Ministry for the Environment, work with Te Runanga to obtain information on Maori values in relation to land and water;*

- *work with Te Runanga to undertake a case study in the Ngai Tahu Claim Area pursuant of the Ministry for the Environment's monitoring functions under section 24 of the Resource Management Act 1991, to investigate how Treaty of Waitangi obligations and responsibilities specified in the Resource Management Act 1991 are working in practice.*